

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

**REGULAR MEETING  
Tuesday, January 18, 2022  
9:30 A.M.**

**Pursuant to Assembly Bill 361, signed into law on September 16, 2021 as urgency legislation; Governor Newsom’s Proclamation of a State of Emergency on March 4, 2020, which Proclamation is still in effect; and Board of Retirement Resolution 2021-03, this meeting will be conducted by video/teleconference only, in compliance with Government Code section 54953 as amended by Assembly Bill 361. None of the locations from which the Board members will participate will be open to the public.**

**Members of the public who wish to observe and/or participate in the meeting may do so via the Zoom app or via telephone. 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.**

| OCERS Zoom Video/Teleconference information  |  |
|--|--|
| <p><b>Join Using Zoom App (Video &amp; Audio)</b></p> <p><a href="https://ocers.zoom.us/j/86757427977">https://ocers.zoom.us/j/86757427977</a></p> <p><b>Meeting ID: 867 5742 7977</b><br/><b>Password: 982221</b></p> <p>Go to <a href="https://www.zoom.us/download">https://www.zoom.us/download</a> to download Zoom app before meeting<br/>Go to <a href="https://zoom.us">https://zoom.us</a> to connect online using any browser.</p> | <p><b>Join by Telephone (Audio Only)</b></p> <p>Dial by your location</p> <ul style="list-style-type: none"> <li>+1 669 900 6833 US (San Jose)</li> <li>+1 346 248 7799 US (Houston)</li> <li>+1 253 215 8782 US</li> <li>+1 301 715 8592 US</li> <li>+1 312 626 6799 US (Chicago)</li> <li>+1 929 436 2866 US (New York)</li> </ul> <p><b>Meeting ID: 867 5742 7977</b><br/><b>Password: 982221</b></p> |
| <p>A <a href="#">Zoom Meeting Participant Guide</a> is available on OCERS website <a href="#">Board &amp; Committee meetings page</a></p>  |  |

**AGENDA**

**The Orange County Board of Retirement welcomes you to this meeting. This agenda contains a brief general description of each item to be considered. The Board of Retirement may take action on any item included in the following agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda. The Board of Retirement may consider matters included on the agenda in any order, and not necessarily in the order listed.**

**CALL MEETING TO ORDER AND ROLL CALL**

**OATH OF OFFICE – CHRIS PREVATT**

Administered by Clerk of the Board, Robin Stieler

**PUBLIC COMMENTS**

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 Board; and (2) any matter appearing on the Consent Agenda. Members of the public who wish to provide comment at this time may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing \* 9 on your telephone keypad. When addressing the Board, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

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

**CONSENT AGENDA**

All matters on the Consent Agenda are to be approved by one action unless a Board Member requests separate action on a specific item.

**BENEFITS**

**C-1 OPTION 4 RETIREMENT ELECTION**

**Recommendation:** Grant election of retirement benefit payment, Option 4, based on Segal Consulting’s actuarial report.

1. McHenry, Michael P.
2. Whitehurst, Daniel W.

**ADMINISTRATION**

**C-2 BOARD MEETING MINUTES**

Regular Board Meeting Minutes

December 13, 2021

**Recommendation:** Approve minutes.

**C-3 BOARD FINDINGS PURSUANT TO GOVERNMENT CODE § 54953, AS AMENDED BY AB 361, AND ADOPTION OF BOARD RESOLUTION 2022-01**

**Recommendation:** That the Board (1) make the following findings pursuant to Government Code section 54953, as amended by AB 361;

- a. The Board has reconsidered the circumstances of the state of emergency resulting from the COVID-19 pandemic; and
- b. The Board has determined that the following circumstances exist:
  - i. The state of emergency continues to directly impact the ability of the members of the Board to meet safely in person; and
  - ii. State or local officials continue to impose or recommend measures to promote social distancing.

and

(2) Adopt Board of Retirement Resolution 2022-01 to reflect such findings.

**C-4 2022 BUDGET AMENDMENT – IT CAPITAL EXPENDITURES**

**Recommendation:** Approve an amendment to OCERS’ Administrative Budget for Fiscal Year 2022 to carryover costs related to the 2021 Business Plan initiatives to upgrade the Board Room Audio/Visual equipment for \$532,000 and implement new backup solutions to enhance recovery of on premise and cloud systems for \$250,000.

\*\*\*\*\*

**DISABILITY/MEMBER BENEFITS AGENDA**

**9:30 AM**

**NOTE: WHEN CONSIDERING DISABILITY RETIREMENT APPLICATIONS OR MEMBER APPEALS OF BENEFIT OR DISABILITY RETIREMENT DETERMINATIONS, THE BOARD MAY ADJOURN TO CLOSED SESSION TO DISCUSS MATTERS RELATING TO THE MEMBER’S APPLICATION OR APPEAL, PURSUANT TO GOVERNMENT CODE SECTIONS 54957 OR 54956.9. IF THE MATTER IS A DISABILITY APPLICATION UNDER SECTION 54957, THE MEMBER MAY REQUEST THAT THE DISCUSSION BE IN PUBLIC.**

**OPEN SESSION**

**CONSENT ITEMS**

All matters on the Consent Agenda are to be approved by one action unless a Board member requires separate action on a specific item. If separate action is requested, the item will be discussed in closed session during agenda item DA-1.

**DC-1: DANIEL BOWDISH**

Investigator, Orange County Sheriff’s Department (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant non-service connected disability retirement.
- Set the effective date as September 11, 2020.

**DC-2: LIDIA CARMONA**

Social Worker II, Orange County Social Services Agency (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Deny service connected disability retirement due to insufficient evidence of job causation.

**DC-3: EDITH GAGE**

Correctional Services Technician, Orange County Sheriff's Department (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant Service connected disability retirement.
- Set the effective date as March 26, 2021.

**DC-4: LILIAN GRANILLO**

Sergeant, Orange County Sheriff's Department (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as September 11, 2020.

**DC-5: ROBERT HOFFMANN**

Deputy Sheriff II, Orange County Sheriff's Department (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as March 26, 2021.

**DC-6: BRIAN HOPP**

Firefighter, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as January 18, 2019.

**DC-7: JEFFREY HUBERT**

Fire Apparatus Engineer, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as January 1, 2021.

**DC-8: JEFFREY McBRIDE**

Firefighter, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as April 22, 2021.

**DC-9: HERMAN RANGEL**

Employment & Eligibility Specialist, Orange County Social Services Agency (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as, October 14, 2016, the day following the last day of regular compensation as an Employment & Eligibility Specialist.
- Find the Applicant is capable of performing other duties in the service of the County of Orange pursuant to Government Code Section 31725.65.
- Grant a supplemental disability retirement payment allowance in the amount of the salary difference between the higher and lower paying positions effective May 7, 2021, the date of the position change, until the day Mr. Rangel wishes to retire from the new position.

**DC-10: DAVID WOLF**

Fire Captain/Paramedic, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as the day after the last day of regular compensation.

**DC-11: RANDY ZERANCE**

Sheriff's Special Officer II, Orange County Sheriff's Department (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as the day after the last day of regular compensation.

**CLOSED SESSION**

**Government Code section 54957**

**Adjourn to Closed Session under Government Code section 54957 to consider member disability applications and to discuss member medical records submitted in connection therewith. The applicant may waive confidentiality and request his or her disability application to be considered in Open Session.**

**OPEN SESSION**

**REPORT OF ACTIONS TAKEN IN CLOSED SESSION**

**DA-1: INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE DISABILITY/MEMBER BENEFITS CONSENT AGENDA**

**DA-2: MCDONALD, KEVIN – REQUEST FOR REDUCTION OF OVERPAID BENEFITS**

**Recommendation:** Staff recommends that the Board deny the Applicant’s request to reduce the overpayment amount of \$3,465.73 owed by the Applicant due to overpaid disability benefits by \$2,500.

**DA-3: ADOPTION OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION IN THE MATTER OF THE APPLICATION OF JAMES B. MORELL FOR A RECALCULATED RETIREMENT ALLOWANCE (ON REMAND FROM THE LOS ANGELES COUNTY SUPERIOR COURT AFTER JUDGMENT ON PEREMPTORY WRIT OF MANDATE)**

**Recommendation:** Staff recommends that the Board adopt the proposed Findings of Fact, Conclusions of Law, and Decision, attached hereto as Exhibit B, in the matter of The Application of James B. Morell for a Recalculated Retirement Allowance.

**DA-4: FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION IN THE MATTERS OF THE BENEFIT APPEALS OF MEMBERS SZEWCZYK, ROBERT AND MORIKAWA, RODNEY**

**Recommendation:** In the *Matters of Robert Szewczyk and Rodney Morikawa*, Staff recommends the Board exercise its authority pursuant to subdivision (d) of section 31534 of the California Government Code and:

- (1) Set this matter for hearing before itself;
- (2) Accept the record before the referee, together with additional evidence, written briefing and argument from the parties in accordance with a schedule determined by the Board; and
- (3) Consider all such testimony, evidence, briefing and argument at a future meeting of the Board at which time the Board will decide the matter as if it had not been referred to the referee.

**CLOSED SESSION**

**Government Code section 54957**

**Adjourn to Closed Session under Government Code section 54957 to consider member disability applications and to discuss member medical records submitted in connection therewith. The applicant**

**may waive confidentiality and request his or her disability application to be considered in Open Session.**

**DA-5: MICHELLE WACHTER  
STAFF RECOMMENDATION –**

- (1) MOVE TO RESCIND BOARD ACTION ON AUGUST 19, 2019 REGARDING THE APPLICATION FOR DISABILITY RETIREMENT FILED BY MICHELLE WACHTER; AND**
- (2) REFER THE MATTER BACK TO THE HEARING OFFICER ON THE SOLE ISSUE OF PERMANENT INCAPACITY**

**Recommendation:** Staff recommends that the Board (1) rescind its prior action in this matter to consider new evidence; and (2) refer the matter back to the Hearing Officer on the sole issue of permanent incapacity, pursuant to Government Code section 31534(d).

**OPEN SESSION**

**REPORT OF ACTIONS TAKEN IN CLOSED SESSION**

**ACTION ITEMS**

**NOTE:** Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Board’s discussion of the item. **Members of the public who wish to provide comment in connection with any matter listed in this agenda may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing \* 9, at the time the item is called.**

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

**A-2 AUDIT COMMITTEE – EXTERNAL AUDITOR CONTRACT AWARD**

*Presentation by Brenda Shott CPA, Assistant CEO Finance and Internal Operations, OCERS*

**Recommendation:** The Audit Committee recommends the Board of Retirement award a contract for financial auditor services to Moss Adams LLP, subject to satisfactory negotiation of terms.

**A-3 REINSTATEMENT OF EMERGENCY PAID SICK LEAVE (EPSL)**

*Presentation by Cynthia Hockless, Director of Human Resources, OCERS*

**Recommendation:**

Staff recommends that the Board of Retirement approve the reinstatement of Emergency Paid Sick Leave (EPSL) for Orange County Employees Retirement System (OCERS) Direct employees from December 31, 2021, through April 07, 2022. Approval and adoption of emergency leave practices will provide employees with compensation relief during COVID-19-related absences. The recommendation includes the following:

1. Authorize the Chief Executive Officer, or Designee, to administer a 2022 Emergency Paid Sick Leave Program effective December 31, 2021, to April 7, 2022, that provides employees

up to 40 hours of paid sick leave for qualifying COVID-related absences. The use of this leave will be retroactively applied.

2. Authorize the Chief Executive Officer, the discretion to provide up to 40 additional hours of paid sick leave for qualifying COVID-related absences and to extend the program to June 30, 2022, in a manner consistent with combating the health pandemic.
3. Authorize the Chief Executive Officer, or Designee, after review by Counsel and notification to the Board, to administer future state and/or federal statutorily required leave programs in a manner consistent with the parameters approved by the Board for the health pandemic.

This recommendation mirrors the reinstatement of EPSL approved by the Orange County Board of Supervisors for County of Orange employees at their January 11, 2022, Board meeting.

**INFORMATION ITEMS**

Each of the following informational items will be presented to the Board for discussion.

**Presentations**

- I-1 DISCOVERY OF ERRONEOUS CALCULATION OF FINAL AVERAGE SALARY FOR FULL-TIME MEMBERS WITH LESS THAN THREE YEARS OCERS SERVICE AND PART-TIME MEMBERS**  
*Presentation by Steve Delaney, Chief Executive Officer, OCERS*
- I-2 2021 OCERS INNOVATIONS AND PROCESS IMPROVEMENTS**  
*Presentation by Steve Delaney, Chief Executive Officer, OCERS and the OCERS Team*
- I-3 COVID-19 UPDATE**  
*Presentation by Steve Delaney, Chief Executive Officer, OCERS*

**WRITTEN REPORTS**

The following are written reports that will not be discussed unless a member of the Board requests discussion.

- R-1 MEMBER MATERIALS DISTRIBUTED**  
Written Report  
  
Application Notices January 18, 2022  
Death Notices January 18, 2022
- R-2 COMMITTEE MEETING MINUTES**  
- 10-04-2021 Audit Committee Meeting Minutes
- R-3 CEO FUTURE AGENDAS AND 2022 OCERS BOARD WORK PLAN**  
Written Report
- R-4 QUIET PERIOD – NON-INVESTMENT CONTRACTS**



Written Report

**R-5 BOARD COMMUNICATIONS**

Written Report

**R-6 2021 OCERS YEAR IN REVIEW: COMMUNICATION PLAN**

Written Report

**R-7 DISABILITY RETIREMENT STATISTICS – 2021 REPORT**

Written Report

**R-8 ANNUAL FORM 700 DESIGNATED FILERS LIST AND FACT SHEET**

Written Report

**R-9 BOARD COMMUNICATIONS POLICY FACT SHEET**

Written Report

**R-10 FOURTH QUARTER 2021 EDUCATION AND TRAVEL EXPENSE REPORT**

Written Report

**R-11 OCERS TRUSTEE EDUCATION SUMMARY REPORT**

Written Report

**R-12 2022 OCERS BOARD COMMITTEE ASSIGNMENTS**

Written Report

**R-13 CONTRACT STATUS FOR NAMED SERVICE PROVIDERS**

Written Report

**CIO COMMENTS**

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

**COUNSEL COMMENTS**

**BOARD MEMBER COMMENTS**

\*\*\*\*\*

**ADJOURNMENT: (IN MEMORY OF THE ACTIVE MEMBERS, RETIRED MEMBERS, AND SURVIVING SPOUSES WHO PASSED AWAY THIS PAST MONTH)**

**NOTICE OF NEXT MEETINGS**

**DISABILITY COMMITTEE MEETING**

**February 22, 2022**

**8:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**REGULAR BOARD MEETING**

**February 22, 2022**

**9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**INVESTMENT COMMITTEE MEETING**

**February 23, 2022**

**9:30 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](mailto: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.



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Jonathea Tallase, Member Services Manager  
**SUBJECT:** **OPTION 4 RETIREMENT ELECTION – MICHAEL MCHENRY**

---

### Recommendation

Grant election of retirement benefit payment, Option 4, based on Segal Consulting’s actuarial report.

### Background/Discussion

This member elected Option 4 as the benefit payment option for his service retirement allowance as required by his Domestic Relations Order (DRO), effective October 29, 2021. The Orange County Employees Retirement System (OCERS) was joined in the member’s dissolution of marriage and under the terms of the DRO, the member’s ex-spouse was awarded a lifetime continuance as a percentage of the member’s allowance.

The approval of Option 4 will not increase OCERS liability because the cost of this Option 4 benefit is proportional to the cost of the other benefit plans. Segal Consulting has calculated the member’s monthly allowance as indicated in the attached letter, as well as the allowance payable to the member’s ex-spouse and the member’s girlfriend’s continuance (upon the member’s death).

### Submitted by:



J. T. – APPROVED

Jonathea Tallase  
Member Services Manager



Molly Calcagno, ASA, MAAA, EA  
Actuary  
T 415.263.8254  
mcalcagno@segalco.com

180 Howard Street, Suite 1100  
San Francisco, CA 94105-6147  
segalco.com

**Personal and Confidential**

December 14, 2021

Ms. Adina Bercaru  
Member Services Manager  
Orange County Employees Retirement System  
2223 Wellington Avenue  
Santa Ana, CA 92701-3101

**Re: Orange County Employees Retirement System (OCERS)  
Option 4 Calculation for Michael McHenry**

Dear Adina:

Pursuant to your request, we have determined the Option 4 benefits payable to Michael McHenry, his ex-spouse, and his girlfriend based on the unmodified benefit and other information provided in the System’s request dated December 9, 2021.

The monthly benefits payable to the member, ex-spouse, and girlfriend and the data we used for our calculations are as follows:

|   |                    |
|---|--------------------|
| Member’s Date of Birth                          |                    |
| Ex-Spouse’s Date of Birth                       |                    |
| Date of Retirement                              | October 29, 2021   |
| Plan of Membership                              | Safety Plan F      |
| Monthly Unmodified Benefit                      | \$13,720.69        |
| Ex-Spouse’s Share of Monthly Unmodified Benefit | 37.48%             |
| Retirement Type                                 | Service Retirement |
| Girlfriend’s Date of Birth <sup>1</sup>         |                    |
| Continuance Payable to Girlfriend               | 10%/20%/50%        |

<sup>1</sup> In providing this calculation, we have made the assumption that the girlfriend has satisfied the definition of having an “insurable interest” in the life of the member as required by Section 31764.

Ms. Adina Bercaru  
December 14, 2021  
Page 2

We have determined the Option 4 benefits using a two-part process. In Part One, we first calculated the adjustment to the member's unmodified benefit to provide a 37.48% continuance to the ex-spouse. As instructed by OCERS, the cost to provide the continuance benefit to the ex-spouse is paid for entirely by the ex-spouse.

### Part One – Before Adjustment for Continuance to Girlfriend

|   | Payable while the<br>Member is Alive | Payable after the<br>Member's Death |
|---|--------------------------------------|-------------------------------------|
| Monthly benefit payable to member                 |                                      |                                     |
| Annuity:  | \$1,543.05                           |                                     |
| Pension:  | <u>7,035.13</u>                      |                                     |
| Total:  | \$8,578.18                           | \$0.00                              |
| Monthly benefit payable to ex-spouse <sup>2</sup> | \$4,738.93                           | \$4,738.93                          |

In Part Two, we further adjusted the member's benefit in Part One so that a continuance benefit of 10%, 20%, or 50% can be paid to the member's girlfriend. In addition, the cost to provide this continuance benefit would be paid for entirely by the member.

<sup>2</sup> This is equal to 37.48% of the member's unmodified benefit (i.e., 37.48% \* \$13,720.69 or \$5,142.51) adjusted further to provide a benefit payable over the ex-spouse's lifetime or to the estate of the ex-spouse if the ex-spouse pre-deceases the member.

Ms. Adina Bercaru  
December 14, 2021  
Page 3

## Part Two – After Adjustment for Continuance Benefit Payable to Girlfriend

### Alternative A: 10% Continuance

|   | Payable while the Member is Alive | Payable after the Member's Death |
|---|-----------------------------------|----------------------------------|
| Monthly benefit payable to member                 |                                   |                                  |
| Annuity:  | \$1,525.25                        |                                  |
| Pension:  | <u>6,953.96</u>                   |                                  |
| Total:  | \$8,479.21                        | \$0.00                           |
| Monthly benefit payable to girlfriend             | \$0.00                            | \$847.92                         |
| Monthly benefit payable to ex-spouse <sup>3</sup> | \$4,738.93                        | \$4,738.93                       |

### Alternative B: 20% Continuance

|   | Payable while the Member is Alive | Payable after the Member's Death |
|---|-----------------------------------|----------------------------------|
| Monthly benefit payable to member                 |                                   |                                  |
| Annuity:  | \$1,507.85                        |                                  |
| Pension:  | <u>6,874.65</u>                   |                                  |
| Total:  | \$8,382.50                        | \$0.00                           |
| Monthly benefit payable to girlfriend             | \$0.00                            | \$1,676.50                       |
| Monthly benefit payable to ex-spouse <sup>3</sup> | \$4,738.93                        | \$4,738.93                       |

### Alternative C: 50% Continuance

|   | Payable while the Member is Alive | Payable after the Member's Death |
|---|-----------------------------------|----------------------------------|
| Monthly benefit payable to member                 |                                   |                                  |
| Annuity:  | \$1,457.96                        |                                  |
| Pension:  | <u>6,647.20</u>                   |                                  |
| Total:  | \$8,105.16                        | \$0.00                           |
| Monthly benefit payable to girlfriend             | \$0.00                            | \$4,052.58                       |
| Monthly benefit payable to ex-spouse <sup>3</sup> | \$4,738.93                        | \$4,738.93                       |

<sup>3</sup> This is equal to 37.48% of the member's unmodified benefit (i.e., 37.48% \* \$13,720.69 or \$5,142.51) adjusted further to provide a benefit payable over the ex-spouse's lifetime or to the estate of the ex-spouse if the ex-spouse pre-deceases the member.

Ms. Adina Bercaru  
December 14, 2021  
Page 4

## ACTUARIAL ASSUMPTIONS

Effective interest rate of 4.136253% per year, which is calculated using an investment return assumption of 7.00% per year together with a cost-of-living adjustment assumption of 2.75% per year.

Headcount-Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional mortality improvement scale MP-2016 set back four years, weighted 80% male and 20% female for members.

Headcount-Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional mortality improvement scale MP-2016, weighted 20% male and 80% female for beneficiaries.

The actuarial calculations contained in this letter were prepared under my supervision. I am a member of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion herein.

Please let us know if you have any comments or questions. As in all matters pertaining to the interpretation and application of the law, Plan, or individual Option 4 Calculation provisions, you should be guided by the advice of the Plan's Legal Counsel.

Sincerely,



Molly Calcagno, ASA, MAAA, EA  
Actuary

JY/hy



January 6, 2022

Michael P. Mchenry

Re: Retirement Election Confirmation – Option 4

Dear Mr. MCHENRY:

You have elected Option 4 as your retirement option. This option will provide the following:

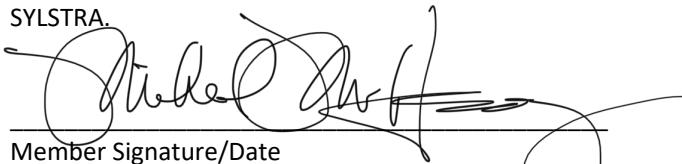
37.48% of your monthly benefit, for the life of the benefit, to TINA MCHENRY

50% of your monthly benefit (upon your death) to your girlfriend CATHERINE E SYLSTRA

This designation is irrevocable; you will not be allowed to change your retirement option or designated beneficiary.

Please complete this form and return to OCERS as soon as possible.

I understand that my retirement option is irrevocable; by choosing Option 4 I will take a monthly reduction in order to provide a: 37.48% continuance to TINA MCHENRY and 50% Continuance to CATHERINE E SYLSTRA.

  
Member Signature/Date

Sincerely,



Sandy Guevara  
Retirement Program Specialist





## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Jonathea Tallase, Member Services Manager  
**SUBJECT:** **OPTION 4 RETIREMENT ELECTION – DANIEL WHITEHURST**

---

### Recommendation

Grant election of retirement benefit payment, Option 4, based on Segal Consulting’s actuarial report.

### Background/Discussion

This member elected Option 4 as the benefit payment option for his service retirement allowance as required by his Domestic Relations Order (DRO), effective November 5, 2021. The Orange County Employees Retirement System (OCERS) was joined in the member’s dissolution of marriage and under the terms of the DRO, the member’s ex-spouse was awarded a lifetime continuance as a percentage of the member’s allowance.

The approval of Option 4 will not increase OCERS liability because the cost of this Option 4 benefit is proportional to the cost of the other benefit plans. Segal Consulting has calculated the member’s monthly allowance as indicated in the attached letter, as well as the allowance payable to the member’s ex-spouse.

### Submitted by:



J. T. – APPROVED

Jonathea Tallase  
Member Services Manager



Molly Calcagno, ASA, MAAA, EA  
Actuary  
T 415.263.8254  
mcalcagno@segalco.com

180 Howard Street, Suite 1100  
San Francisco, CA 94105-6147  
segalco.com

**Personal and Confidential**

December 20, 2021

Ms. Adina Bercaru  
Member Services Manager  
Orange County Employees Retirement System  
2223 Wellington Avenue  
Santa Ana, CA 92701-3101

**Re: Orange County Employees Retirement System (OCERS)  
Option 4 Calculation for Daniel Whitehurst**

Dear Adina:

Pursuant to your request, we have determined the Option 4 benefits payable to Daniel Whitehurst and his ex-spouse based on the unmodified benefit and other information provided in the System's request dated December 17, 2021.

The monthly benefits payable to the member and the ex-spouse and the data we used for our calculations are as follows:

|   |                    |
|---|--------------------|
| Member's Date of Birth                          |                    |
| Ex-Spouse's Date of Birth                       |                    |
| Date of Retirement                              | November 5, 2021   |
| Plan of Membership                              | General Plan J     |
| Monthly Unmodified Benefit                      | \$3,540.32         |
| Ex-Spouse's Share of Monthly Unmodified Benefit | 34.47%             |
| Retirement Type                                 | Service Retirement |

Ms. Adina Bercaru  
 December 20, 2021  
 Page 2

We calculated the adjustment to the member's unmodified benefit to provide a 34.47% continuance to the ex-spouse. As instructed by OCERS, the cost to provide the continuance benefit to the ex-spouse is paid for entirely by the ex-spouse.

|   | Payable while the<br>Member is Alive | Payable after the<br>Member's Death |
|---|--------------------------------------|-------------------------------------|
| Monthly benefit payable to member                 |                                      |                                     |
| Annuity:  | \$976.17                             |                                     |
| Pension:  | <u>1,343.80</u>                      |                                     |
| Total:  | \$2,319.97                           | \$0.00                              |
| Monthly benefit payable to ex-spouse <sup>1</sup> | \$1,105.03                           | \$1,105.03                          |

#### ACTUARIAL ASSUMPTIONS

Effective interest rate of 4.136253% per year, which is calculated using an investment return assumption of 7.00% per year together with a cost-of-living adjustment assumption of 2.75% per year.

Headcount-Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional mortality improvement scale MP-2016, weighted 40% male and 60% female for members.

Headcount-Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional mortality improvement scale MP-2016, weighted 60% male and 40% female for beneficiaries.

The actuarial calculations contained in this letter were prepared under my supervision. I am a member of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion herein.

<sup>1</sup> This is equal to 34.47% of the member's unmodified benefit (i.e., 34.47% \* \$3,540.32 or \$1,220.35) adjusted further to provide a benefit payable over the ex-spouse's lifetime or to the estate of the ex-spouse if the ex-spouse pre-deceases the member.

Ms. Adina Bercaru  
December 20, 2021  
Page 3

Please let us know if you have any comments or questions. As in all matters pertaining to the interpretation and application of the law, Plan, or individual Option 4 Calculation provisions, you should be guided by the advice of the Plan's Legal Counsel.

Sincerely,



Molly Calcagno, ASA, MAAA, EA  
Actuary

JY/hy



December 22, 2021

Daniel W. Whitehurst

Re: Retirement Election Confirmation – Option 4

Dear Mr. WHITEHURST:

You have elected Option 4 as your retirement option. This option will provide a 34.47% of your monthly benefit, for the life of the benefit, to: Roslyn Whitehurst

This designation is irrevocable; you will not be allowed to change your retirement option or designated beneficiary.

Please complete this form and return to OCERS as soon as possible.

I understand that my retirement option is irrevocable; by choosing Option 4 I will take a monthly reduction in order to provide a 34.47% continuance to ROSLYN WHITEHURST

*[Handwritten Signature]* 12/22/21  
Member Signature/Date

Sincerely,

Cesar Rodriguez  
Retirement Program Specialist

PO Box 1229, Santa Ana, CA 92702 • Telephone (714) 558-6200 • www.ocers.org  
"We provide secure retirement and disability benefits with the highest standards of excellence."

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

**REGULAR MEETING  
Monday, December 13, 2021  
9:30 a.m.**

**MINUTES**

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

Recording Secretary administered the Roll Call attendance.

Attendance was as follows:

Present via Zoom Video conference pursuant to Government Code § 54953, as amended by AB 361:

Shawn Dewane, Chair; Frank Eley, Vice-Chair, Richard Oates, Adele Tagaloa, Charles Packard, Chris Prevatt, Arthur Hidalgo, Jeremy Vallone, Shari Freidenrich, and Wayne Lindholm

Also Present via Zoom:

Steve Delaney, Chief Executive Officer; Brenda Shott, Assistant CEO, Internal Operations; Suzanne Jenike, Assistant CEO, External Operations; Gina Ratto, General Counsel; Jenny Sadoski, Director of Information Technology, Anthony Beltran, Audio-Visual Technician; Brittany Cleberg; Recording Secretary

**CONSENT AGENDA**

**MOTION** by Mr. Lindholm, **seconded** by Mr. Prevatt to approve recommendations on all of the following items excluding item C-3 on the Consent Agenda:

**BENEFITS**

**C-1 OPTION 4 RETIREMENT ELECTION**

**Recommendation:** Grant election of retirement benefit payment, Option 4, based on Segal Consulting's actuarial report.

- None

**ADMINISTRATION**

**C-2 BOARD MEETING MINUTES**

Regular Board Meeting Minutes

November 15, 2021

**Recommendation:** Approve Minutes.

**C-3 BOARD FINDINGS PURSUANT TO GOVERNMENT CODE § 54953, AS AMENDED BY AB 361, AND ADOPTION OF BOARD RESOLUTION 2021-03**

**Recommendation:** That the Board (1) make the following findings pursuant to Government Code section 54953, as amended by AB 361;

- a. The Board has reconsidered the circumstances of the state of emergency resulting from the COVID-19 pandemic; and
- b. The Board has determined that the following circumstances exist:
  - i. The state of emergency continues to directly impact the ability of the members of the Board to meet safely in person; and
  - ii. State or local officials continue to impose or recommend measures to promote social distancing.

and

(2) Adopt Board of Retirement Resolution 2021-03 to reflect such findings.

**C-4 2022 OCERS BOARD ANNUAL WORK PLAN**

**Recommendation:** Approve 2022 OCERS Board Annual Work plan.

\*\*\*\*\*

**CONSENT ITEMS: DISABILITY/MEMBER BENEFITS AGENDA**

**OPEN SESSION**

**CONSENT ITEMS**

Ms. Jenike announced that item DC-1 and DC-3 was pulled from the agenda.

**MOTION** by Eley, **seconded** by Oates, to approve staff’s recommendation on all of the following items on the Disability/Member Benefits Consent Agenda excluding item DC-1 and DC-3:

**DC-1: EDWARD CORTEZ**

Journeyman Mechanic, Orange County Transportation Authority (General Member)

**Recommendation:** The Disability Committee recommends that the Board of Retirement:

- Deny service and non-service connected disability retirement without prejudice due to the member’s failure to cooperate.

**DC-2: MINEA GRACIA**

Eligibility Technician, Orange County Social Services Agency (General Member)

**Recommendation:** The Disability Committee recommends that the Board of Retirement:

- Deny service and non-service connected disability retirement due to insufficient evidence of permanent incapacity.

**DC-3: MONICA RANGEL-SANTOS**

Eligibility Technician, Orange County Social Services Agency (General Member)

**Recommendation:** The Disability Committee recommends that the Board of Retirement:

- Deny service and non-service connected disability retirement due to insufficient evidence of permanent incapacity.

**DC-4: MICHAEL SCHROEDER**

Battalion Chief, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board of Retirement:

- Grant service connected disability retirement.
- Set the effective date as March 26, 2021.

**DC-5: STEVE TEAL**

Firefighter/Paramedic, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board of Retirement:

- Grant service connected disability retirement.
- Set the effective date as August 13, 2021.

The motion passed **unanimously.**

**OPEN SESSION**

**DA-2: APPLICATION OF JAMES B. MORELL FOR A RECALCULATED RETIREMENT ALLOWANCE -- ON REMAND FROM THE LOS ANGELES COUNTY SUPERIOR COURT AFTER JUDGMENT ON PEREMPTORY WRIT OF MANDATE**

**Recommendation:** Staff recommends that the Board: (1) set aside its prior administrative decision of October 18, 2018 in this matter, and (2) reconsider the Application of James B. Morell for a Recalculated Retirement Allowance in light of the Superior Court's Judgment and Writ, wherein the Board is directed by the Court to decide the Applicant's contentions that OCERS improperly excluded Optional Benefit Plan payments from the calculation of his final compensation separate and apart from the 2002 Settlement Agreement in *In re Retirement Cases*, Judicial Council Coordination Proceeding No. 4049 in San Francisco County Superior Court.

Ms. Ratto provided the Board an overview of the procedural background of Mr. Morell's case, and explained the two actions needed from the Board in order to comply with the Court's Writ. First, the



Board must set aside its prior administrative decision dated October 18, 2018 in this matter; and second, the Board must reconsider Mr. Morell's contentions that OCERS improperly excluded Optional Benefit Plan (OBP) payments from the calculation of his final compensation separate and apart from the 2002 Settlement Agreement in *In re Retirement Cases*.

Ms. Ratto asked Chair Dewane to call for a motion to set aside the Board's October 18, 2018 administrative decision.

Chair Dewane requested a motion.

**MOTION** by Eley, **seconded** by Tagaloa, to set aside the Board's prior administrative decision of October 18, 2018.

The motion passed **unanimously**.

Ms. Ratto then stated for the record there is a court reporter in attendance who is transcribing the proceedings. She also confirmed for the record that on November 19, the Board was provided a copy of the Administrative Record in this case, the Opening and Responsive Briefs of both Mr. Morell and OCERS, and Declarations and exhibits from both parties – almost 3,000 pages of records.

Chair Dewane introduced James Morell, a retired attorney, representing himself in this matter.

Mr. Morell first expressed concerns regarding the procedural overview of his case that was presented to the Board by Ms. Ratto. Mr. Morell then summarized and walked the Board through the written briefs that he filed, and presented his legal argument to the Board, with references to court cases supporting his position. He requested that the Board reconsider his case.

Chair Dewane introduced OCERS Staff Attorney, Dawn Matsuo.

Ms. Matsuo presented legal argument in support of OCERS' staff's position that OCERS properly excluded OBP payments from the calculation of Mr. Morell's final compensation.

After questions from the Board directed to both parties and discussion by the Board, Chair Dewane made the following statement and motion:

In accordance with the instructions of the Los Angeles County Superior Court in this matter, the Board has, separate and apart from the 2002 Settlement Agreement reconsidered the application of James Morell for a recalculated retirement allowance; and the Board has heard Mr. Morell's contentions that OCERS improperly excluded Optional Benefit Plan payments from the calculation of his final compensation; and that the Board make a finding that OCERS properly excluded all OBP payments from the calculation of Mr. Morell's final compensation under the CERL provisions and related laws in effect when Mr. Morell retired in 2014.

The motion was seconded by Prevatt.

Mr. Morell asked a procedural question about the motion. Ms. Ratto responded to Mr. Morell's question and Mr. Morell stated he was in agreement with the procedure as described.

The motion passed **unanimously**.

Ms. Ratto asked the Chair to direct staff to prepare written proposed findings and decision, and share them with Mr. Morell by December 22, and tht Mr. Morell would then have until January 4 to submit changes and/or objections to the proposed findings and decision, and that both documents be provided to the Board on or before January 7 for consideration by the Board at its January 18, 2022 meeting.

Chair Dewane confirmed that this was the direction of the Board to staff.

The Board took a break at 11:40 a.m.

The Board reconvened at 12:01 p.m.

**ACTION ITEMS:**

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

Ms. Freidenrich pulled item C-3.

Ms. Freidenrich stated she is concerned about item C-3 Recommendation: b, ii. State or local officials continue to impose or recommend measures to promote social distancing, as the County does not have these requirements at the workplace.

Ms. Ratto stated the recommendation came from the County of Orange Health Officer's Orders and Strong Recommendations that was revised on November 17, 2021.

Ms. Ratto explained the Orders and Recommendations contain a statement on the importance of taking preventive measures to avoid contracting Covid-19. They include: getting vaccinated, wearing a mask, avoid gatherings, and social distancing.

Ms. Ratto stated based on these Orders and Recommendations, staff wanted to bring this item before the Board for approval to adopt this resolution.

**MOTION** by Freidenrich, **seconded** by Dewane, to approve item C-3 on the Consent Agenda.

The motion passed **unanimously**.

**A-2 ELECTION OF OCERS BOARD VICE CHAIR**

*Presentation by Steve Delaney, Chief Executive Officer, OCERS*

Mr. Delaney provided brief remarks and options electing Vice-Chair in 2022. He turned the item over to Mr. Dewane for discussion.

Mr. Eley gave brief explanation why he was opting not to serve as Chair.

**MOTION** by Eley, **SECONDED** by Packard, to appoint Dewane to serve a second term as Chair of the Board in 2022.

**SUBSTITUTE MOTION** by Prevatt, **SECONDED** by Packard for purposes of discussion, to appoint Prevatt to serve as Chair of the Board in 2022.

During discussion, Vice Chair Eley indicated that he has changed his mind and is now willing to accede to the position of Chair of the Board in 2022 as contemplated by the Board of Retirement Charter. After discussion, the original motion was **WITHDRAWN**.

With Eley acceding to the position of Chair of the Board in 2022, the Board proceeded to consider the election of a Vice Chair for 2022.

After discussion, **MOTION** by Packard nominating Mr. Hidalgo to serve as Vice Chair of the Board in 2022. **SECONDED** by Prevatt. Mr. Hidalgo declined nomination.

**MOTION** by Lindholm, **SECONDED** by Packard, nominating Dewane to serve as Vice Chair of the Board in 2022.

**SUBSTITUTE MOTION** by Packard, **SECONDED** by Hidalgo, to appoint Dewane to serve a second term as Chair of the Board in 2022, and to elect an elected Board member to serve as Vice Chair.

After discussion, the substitute motion was **WITHDRAWN**.

The original **MOTION** by Lindholm, **SECONDED** by Packard, nominating Dewane to serve as Vice Chair of the Board in 2022, **carried unanimously**.

Frank Eley will serve as Chair of the OCERS Board in 2022, and Shawn Dewane will serve at the Vice Chair of the Board in 2022.

The Board took a break at 12:55 P.m.

The Board reconvened at 3:30 p.m.

### **A-3 COMPENSATION OF THE CHIEF EXECUTIVE OFFICER**

**Recommendation:** Take appropriate action.

Mr. Eley stated that based inflation and on the evaluation of Mr. Delaney's performance he recommended a salary increase of 6%.

After discussion by the Board they proposed: (broken down)

5% base

2% Bonus

**MOTION** by Packard, **seconded** by Prevatt, to approve an increase of 5% in the salary for the OCERS Chief Executive Officer, Steve Delaney, broken out as 5% base building (salary adjustment) and 2% in a lump sum (bonus).

The motion passed **unanimously**.

#### **CLOSED SESSION**

The Board adjourned into closed session at 3:37 p.m.

#### **Government Code section 54957**

**Adjourn to Closed Session under Government Code section 54957 to consider member disability applications and to discuss member medical records submitted in connection therewith. The applicant may waive confidentiality and request his or her disability application to be considered in Open Session.**

#### **OPEN SESSION**

The Board reconvened into open session at 4:50 p.m.

#### **REPORT OF ACTIONS TAKEN IN CLOSED SESSION**

No reportable action taken.

#### **INFORMATIONAL ITEMS**

Each of the following informational items will be presented to the Board for discussion.

#### **Presentations**

**I-1 RETIRED EMPLOYEES ASSOCIATION OF ORANGE COUNTY – ISSUES UPDATE**  
*Presentation made by Linda Robinson and Doug Storm, Co-Presidents, REAOC*

Mr. Storm and Ms. Robinson provided their yearly update and explained the challenges faced by retirees in 2021 especially with the current pandemic. They also thanked OCERS staff for their ongoing support and services on behalf of retired members.

**I-2 COVID-19 UPDATE**  
*Presentation by Steve Delaney, Chief Executive Officer, OCERS*

Mr. Delaney presented the COVID-19 update. He informed the Board that OCERS staff continue to work remotely until the end of the year. Mr. Delaney mentioned that the plan is to have a hybrid schedule for OCERS staff beginning January 2022. Mr. Delaney further stated that OCERS remains closed to the public.

**Written Reports**

No written reports were pulled for discussion.

**R-1 MEMBER MATERIALS DISTRIBUTED**

Written Report

Application Notices

December 13, 2021

Death Notices

December 13, 2021

**R-2 COMMITTEE MEETING MINUTES**

- None

**R-3 CEO FUTURE AGENDAS AND 2021 OCERS BOARD WORK PLAN**

Written Report

**R-4 QUIET PERIOD – NON-INVESTMENT CONTRACTS**

Written Report

**R-5 BOARD COMMUNICATIONS**

Written Report

**R-6 REVIEW OF NEW PAY ITEMS ADDED BETWEEN DECEMBER 31, 2009 AND SEPTEMBER 30, 2021 AS PRESENTED TO THE GOVERNANCE COMMITTEE ON OCTOBER 28, 2021**

Written Report

**R-7 GENERAL MEMBER ELECTION UPDATE**

Written Report

**CLOSED SESSION**

**E-1 PUBLIC EMPLOYEE PERFORMANCE EVALUATION PURSUANT TO GOVERNMENT CODE SECTION 54957**

Adjourn to closed session pursuant to Government Code Section 54957

Position to be evaluated: Chief Executive Officer

**Recommendation:** Take appropriate action.

Mr. Leiderman reported Board had no reportable action taken.

Orange County Employees Retirement System  
December 13, 2021  
Regular Board Meeting – Minutes

**BOARD MEMBER COMMENTS**

N/A

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

Mr. Delaney reminded the Board to respond to inquiry on Committees.

Announced CA Legislation passed new Mask mandate.

Announced 7 people / 7% of OCERS staff have resigned.

**COUNSEL COMMENTS**

N/A

\*\*\*\*\*

The meeting **ADJOURNED** at 5:04 p.m.

Submitted by:

Approved by:

\_\_\_\_\_  
Steve Delaney  
Secretary to the Board

\_\_\_\_\_  
Shawn Dewane  
Chairman



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT:** **BOARD FINDINGS PURSUANT TO GOVERNMENT CODE § 54953, AS AMENDED BY AB 361, AND ADOPTION OF BOARD RESOLUTION 2022-01**

---

### Recommendation

That the Board:

- (1) Make the following findings pursuant to Government Code section 54953, as amended by AB 361;
  - a. The Board has reconsidered the circumstances of the state of emergency resulting from the COVID-19 pandemic; and
  - b. The Board has determined that the following circumstances exist:
    - i. The state of emergency continues to directly impact the ability of the members of the Board to meet safely in person; and
    - ii. State or local officials continue to impose or recommend measures to promote social distancing.

and
- (2) Adopt Board of Retirement Resolution 2022-01 to reflect such findings.

### Background/Discussion

In March of 2020, amid rising concern surrounding the spread of COVID-19 throughout communities in the state, Governor Newsom declared a state of emergency and issued a series of Executive Orders that modified certain requirements of the Brown Act. The orders waived several requirements for meetings conducted by teleconference, including the requirement that each teleconference location be accessible to the public, that agendas are posted at all teleconference locations, and that each teleconference location be accessible to the public.

On June 11, 2021, the Governor issued Executive Order N-08-21, rescinding the aforementioned modifications of the Brown Act effective September 30, 2021. On September 16, 2021, Assembly Bill 361 was signed into law as urgency legislation. AB 361 provides local agencies with the ability to meet remotely during proclaimed states of emergency under modifications to the Brown Act that are similar in many ways to the rules and procedures established by the Governor's Executive Orders. On September 20, 2021, the Governor signed an executive order waiving the application of AB 361 until October 1, 2021.

AB 361 amended the teleconference rules of the Brown Act and added new provisions for abbreviated teleconferencing procedures that deviate from the traditional teleconferencing procedures during a proclaimed state of emergency, subject to certain requirements specified in the statute.

More specifically, AB 361 amended the Brown Act to add subdivision (e) to Gov't Code § 54953. This subdivision describes the circumstances and procedures for adopting abbreviated teleconferencing procedures during a proclaimed state of emergency, such as the current continuing COVID-19 pandemic. Subdivision (e)(1) of the statute provides the circumstances and requirements under which a local legislative body may adopt the abbreviated teleconferencing procedures. Once a local legislative body meets the requirements for adopting teleconferencing procedures, subdivision (e)(2) provides the requirements for the abbreviated teleconferencing procedures that the local legislative body must implement.

#### **Adopting Abbreviated Teleconferencing Procedures Under AB 361**

A local legislative body, such as OCERS and its standing committees, may elect to use the abbreviated teleconferencing procedures under AB 361 where a state of emergency has been formally proclaimed, ***provided that:***

- State or local officials have imposed or recommended measures to promote social distancing at the time the legislative body holds the meeting (Gov't Code § 54953(e)(1)(A)); ***or***
- The legislative body holds a meeting for the first time for the purpose of determining by majority vote whether, as a result of proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees (Gov't Code § 54953(e)(1)(B)), ***or***
- The legislative body has determined (per previous bullet) that, as a result of the proclaimed state of emergency, meeting in person would continue to present imminent risks to the health or safety of attendees (Gov't Code § 54953(e)(1)(C)).

AB 361 further imposes on local legislative bodies a duty to make factual findings to justify the election to continue to use the abbreviated teleconferencing procedures. (Gov't Code § 54953(e)(3).) Local legislative bodies who wish to consider using the AB 361 abbreviated teleconferencing procedures must make the following factual findings within 30 days after teleconferencing for the first time after the expiration of Executive Order N-29-20, and every 30 days thereafter:

- 1) The legislative body has reconsidered the circumstances of the state of emergency; and
- 2) One or both of the following circumstances exist:
  - a. The state of emergency continues to directly impact the ability of the members to meet safely in person.
  - b. State or local officials continue to impose or recommend measures to promote social distancing.

Until January 1, 2024, public retirement boards and their Boards must reconsider the aforementioned circumstances and make factual findings by majority vote that the circumstances continue to exist in order for the local legislative body to elect and continue to use the abbreviated teleconferencing procedures. (Note that



AB 361 was designed not only to deal with COVID-19 but also with other types of states of emergency, as defined in Gov't Code § 8625 of the California Emergency State Services Act.)

On December 13, 2021, the Board adopted Resolution 2021-03 to reflect the findings made by the Board pursuant to AB 361. **Staff recommends the Board renew its findings and adopt Resolution 2022-01 in order for the Board and its committees to continue to meet by teleconference.**

### **Reconsideration of the State of Emergency and Requisite Findings**

A state of emergency continues to directly impact the ability of the members of the Board and its committees to meet safely in person and, as more fully set forth below, both state and local officials continue to impose or recommend measures to promote social distancing.

The COVID-19 Prevention Emergency Temporary Standards issued by the California Division of Occupational Safety and Health (Cal/OSHA) (codified at 8 C.C.R. § 3205) recommends physical distancing and requires it under certain circumstances. For example, the regulations require employees not wearing a face covering to be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19. In addition, six feet of distance between people is recommended even when outdoors for those who are unmasked and unvaccinated. On December 16, the Occupational Safety and Health Standards Board readopted the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards for the second time. The draft emergency standards include important revisions to make the workplace rules consistent with the latest requirements and recommendations from the California Department of Public Health (CDPH). The revised emergency standards take effect on January 14, 2022; however, as of the date of this memorandum, the final revised emergency standards had not yet been published. A fact sheet about the revised emergency standards is attached to the Resolution.

In addition, OSHA has issued guidance on mitigating and preventing the spread of COVID-19 in the workplace that recommends physical distancing in all communal work areas for unvaccinated and otherwise at-risk workers: "[a] key way to protect such workers is to physically distance them from other such people (workers or customers) – generally at least 6 feet of distance is recommended, although this is not a guarantee of safety, especially in enclosed or poorly ventilated spaces."

Moreover, the County of Orange Health Officer's "Orders and Strong Recommendations" (revised November 17, 2021) states at page 15 that, "[i]n general, the older a person is, the more health conditions a person has, and the more severe the conditions, the more important it is to take preventive measures for COVID-19 such as getting vaccinated, social distancing and wearing a mask when around people who don't live in the same household..." The Health Officer also recognizes, at pages 16 and 17 of the "Orders and Strong Recommendations", the Center for Disease Control's admonition that anyone infected with COVID-19 can spread it even if they do not have symptoms; and that "the current consensus among public health officials for slowing down the transmission of and avoiding contracting COVID-19 is for unvaccinated persons to avoid gathering and practice social distancing, frequently wash hands with soap, wearing face covering and get vaccinated."

Based on the foregoing, staff recommends the Board find that the state of emergency continues to directly impact the ability of the members of the Board to meet safely in person, and that state and local officials continue to impose or recommend measures to promote social distancing. Staff further recommends the Board adopt the attached Resolution 2022-01 to memorialize such findings.

Attachments

**Submitted by:**

---

Gina M. Ratto  
General Counsel

**OCERS BOARD OF RETIREMENT  
RESOLUTION NO. 2022-01**

**RESOLUTION OF THE BOARD OF THE ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM:**

- **RATIFYING (1) THE PROCLAMATION OF A LOCAL HEALTH EMERGENCY BY THE COUNTY OF ORANGE HEALTH OFFICER ON FEBRUARY 26, 2020; (2) THE PROCLAMATION OF A LOCAL EMERGENCY BY THE CHAIRWOMAN OF THE ORANGE COUNTY BOARD OF SUPERVISORS ON FEBRUARY 26, 2020; (3) RESOLUTIONS NO. 20-011 AND 20-012 OF THE ORANGE COUNTY BOARD OF SUPERVISORS RATIFYING THE LOCAL HEALTH EMERGENCY AND THE LOCAL EMERGENCY; AND (4) THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020; AND**
- **AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE BOARD AND ITS COMMITTEES THROUGH FEBRUARY 22, 2022, PURSUANT TO BROWN ACT PROVISIONS.**

WHEREAS, the Board of the Orange County Employees Retirement System (OCERS Board) is a legislative body under Government Code section 54952; and

WHEREAS, OCERS is committed to preserving and nurturing public access and participation in meetings of the OCERS Board and its committees; and

WHEREAS, all meetings of the OCERS Board and its committees are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the OCERS Board and its committees conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a State of Emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the geographical boundaries within which the OCERS Board and its committees hold their meetings, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in Orange County, specifically, a Local Health Emergency based on an imminent and proximate threat to public health from the introduction of COVID-19 in Orange County

was declared by the County of Orange Health Officer on February 26, 2020; a Local Emergency based on the imminent and proximate threat to public health from the introduction of COVID-19 that created conditions of extreme peril to the safety of persons and property within the territorial limits of Orange County was proclaimed by the Chairwoman of the Board of Supervisors on February 26, 2020; Resolutions No. 20-011 and No. 20-012 of the Orange County Board of Supervisors were adopted on March 2, 2020, ratifying the Local Health Emergency and Local Emergency; and a State of Emergency was proclaimed by Governor Newsom for the State of California on March 4, 2020 based on an outbreak of respiratory illness due to COVID-19; and

WHEREAS, the California Division of Occupational Safety and Health has issued COVID-19 prevention Emergency Temporary Standards requiring any employee not wearing a face covering to be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19; and

WHEREAS, the County of Orange Health Officer's Orders and Strong Recommendations, last revised on November 17, 2021, state that the current consensus among public health officials for slowing down the transmission of and avoiding contracting COVID-19 is for unvaccinated persons to avoid gathering and practice social distancing; and

WHEREAS, the CDC currently recommends that organizations prioritize COVID-19 prevention strategies for indoor settings, and that multiple interventions, including maintaining physical distance and avoiding crowds, should be used concurrently to reduce the spread of disease; and

WHEREAS, the OCERS Board does hereby find that the COVID-19 pandemic has caused, and will continue to cause, conditions of peril to the safety of persons that are likely to be beyond the control of services, personnel, equipment, and facilities of OCERS; and

WHEREAS, in making the aforementioned finding, the OCERS Board acknowledges the proclamation of State of Emergency by the Governor of the State of California; the proclamation of Local Health Emergency by the County of Orange Health Officer; the proclamation of a Local Emergency by the Chairwoman of the Orange County Board of Supervisors; and the ratification of the Local Health Emergency and Local Emergency by the Orange County Board of Supervisors; as well as CalOSHA's prevention Emergency Temporary Standards requiring any employee not wearing a face covering to be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19; the County of Orange Health Officer's Orders and Strong Recommendations for unvaccinated persons to avoid gathering and practice social distancing; and the CDC's recommendation for maintaining physical distance and avoiding crowds; and

WHEREAS, as a consequence of the State of Emergency, Local Health Emergency and Local Emergency, the OCERS Board does hereby find that conditions exist to enable the OCERS Board and its committees to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that the OCERS Board and its committees will comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, members of the public who wish to observe or participate in the meeting may do so via the Zoom application or via telephone, as explained in the agenda for the meeting posted on the OCERS' website and at its business office location at least 72 hours prior to the meeting.

NOW, THEREFORE, THE OCERS BOARD DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Acknowledgement of Proclamation of State and Local Emergency. The OCERS Board hereby acknowledges that a State of Emergency has been proclaimed by the Governor of the State of California effective March 4, 2020; that a Local Health Emergency has been proclaimed by the Orange County Health Officer on February 26, 2020; that a Local Emergency has been proclaimed by the Chairwoman of the Board of Supervisors on February 26, 2020; and that the Local Health Emergency and Local Emergency were ratified by the Orange County Board of Supervisors on March 2, 2020, all of which continue to exist within the geographical boundaries of the territory within which the OCERS Board and its committees hold meetings to conduct business.

Section 3. Determination Regarding Health and Safety Need to Continue Teleconferencing. The OCERS Board finds that the State of Emergency directly impacts the ability of the OCERS Board, its committees, members and staff to meet safely in person, and that state or local officials continue to impose or recommend measures to promote social distancing.

Section 4. Remote Teleconference Meetings. The staff and the OCERS Board and each of its committees are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution will take effect immediately upon its adoption and shall be effective until the earlier of February 22, 2022, or such time the OCERS Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the OCERS Board and its committees may continue to meet by teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the Board of the Orange County Employees Retirement System this 18th day of January, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**Assembly Bill No. 361**

**CHAPTER 165**

An act to add and repeal Section 89305.6 of the Education Code, and to amend, repeal, and add Section 54953 of, and to add and repeal Section 11133 of, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 361, Robert Rivas. Open meetings: state and local agencies: teleconferences.

(1) Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void.

Existing law, the California Emergency Services Act, authorizes the Governor, or the Director of Emergency Services when the governor is inaccessible, to proclaim a state of emergency under specified circumstances.

Executive Order No. N-29-20 suspends the Ralph M. Brown Act's requirements for teleconferencing during the COVID-19 pandemic provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency has a procedure for receiving and swiftly

Ch. 165

— 2 —

resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.

This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified.

This bill would prohibit the legislative body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. The bill would prohibit the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified. When there is a continuing state of emergency, or when state or local officials have imposed or recommended measures to promote social distancing, the bill would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to these provisions, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law prohibits a legislative body from requiring, as a condition to attend a meeting, a person to register the person's name, or to provide other information, or to fulfill any condition precedent to the person's attendance.

This bill would exclude from that prohibition, a registration requirement imposed by a third-party internet website or other online platform not under the control of the legislative body.

(2) Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting.

The Governor's Executive Order No. N-29-20 suspends the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(3) Existing law establishes the various campuses of the California State University under the administration of the Trustees of the California State University, and authorizes the establishment of student body organizations in connection with the operations of California State University campuses.

The Gloria Romero Open Meetings Act of 2000 generally requires a legislative body, as defined, of a student body organization to conduct its business in a meeting that is open and public. The act authorizes the legislative body to use teleconferencing, as defined, for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a legislative body, as defined for purposes of the act, to hold public meetings through teleconferencing and



Ch. 165

— 4 —

to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body. With respect to a legislative body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location. Under the bill, a legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. The bill would require that each legislative body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge legislative bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(4) This bill would declare the Legislature's intent, consistent with the Governor's Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

(5) This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 339 to be operative only if this bill and AB 339 are enacted and this bill is enacted last.

(6) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(7) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 89305.6 is added to the Education Code, to read:  
89305.6. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a legislative body may hold public meetings through teleconferencing

and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body.

(b) (1) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the legislative body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the legislative body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the legislative body be physically present at the location specified in the notice of the meeting.

(c) A legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. A legislative body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a legislative body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the legislative body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each legislative body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a legislative body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the legislative body's internet website.

(f) All legislative bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to legislative body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 2. Section 11133 is added to the Government Code, to read:

11133. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the state body be physically present at the location specified in the notice of the meeting.

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically

or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 3. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3.1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body



shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter

2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for

the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting

of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting,

members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 4.1. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, in person except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the

legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint

powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 5. Sections 3.1 and 4.1 of this bill incorporate amendments to Section 54953 of the Government Code proposed by both this bill and Assembly Bill 339. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, but this bill becomes operative first, (2) each bill amends Section 54953 of the Government Code, and (3) this bill is enacted after Assembly Bill 339, in which case Section 54953 of the Government Code, as amended by Sections 3 and 4 of this bill, shall remain operative only until the operative date of Assembly Bill 339, at which time Sections 3.1 and 4.1 of this bill shall become operative.

SEC. 6. It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 7. The Legislature finds and declares that Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.

SEC. 8. (a) The Legislature finds and declares that during the COVID-19 public health emergency, certain requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) were suspended by Executive Order N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(b) The Legislature finds and declares that Section 1 of this act, which adds and repeals Section 89305.6 of the Education Code, Section 2 of this act, which adds and repeals Section 11133 of the Government Code, and Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, all increase and potentially limit the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(1) By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.

(2) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member’s private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public’s right to access information concerning the conduct of the people’s business.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that state and local agencies can continue holding public meetings while providing essential services like water, power, and fire protection to their constituents during public health, wildfire, or other states of emergencies, it is necessary that this act take effect immediately.

O



## DECLARATION OF A LOCAL HEALTH EMERGENCY

WHEREAS, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, non-communicable biologic agent, toxin, or radioactive agent;

WHEREAS, the Centers for Disease Control and Prevention announced on February 25, 2020 that community spread of COVID-19 is likely to occur in the United States;

WHEREAS, based on the Centers for Disease Control and Prevention statements, there is an ongoing risk and likelihood of COVID-19 positive patients being identified in Orange County;

WHEREAS, based on the foregoing, there is an imminent and proximate threat of the introduction of COVID-19 in the County of Orange and a threat to the public health of the County residents;

THEREFORE, the County Health Officer hereby declares a health emergency.



Nichole Quick, MD, MPH  
Health Officer

2/26/2020

Date

COUNTY OF ORANGE  
STATE OF CALIFORNIA  
PROCLAMATION OF A LOCAL EMERGENCY

REQUEST FOR GOVERNOR TO DECLARE A STATE OF EMERGENCY

WHEREAS, in accordance with Government Code Section 8630, a local emergency may be proclaimed by the Board of Supervisors of the County of Orange or by an official so designated by ordinance adopted by the Board of Supervisors; and

WHEREAS, Section 3-1-6(a) of the Codified Ordinances of the County of Orange provides that the Director of Emergency Services shall request the Board of Supervisors to proclaim a local emergency when the Board of Supervisors is in session and the Chair of the Emergency Management Council to so proclaim when the Board of Supervisors is not in session; and

WHEREAS, the Board of Supervisors is not currently in session, and the Director of Emergency Services has requested that the Chair of the Emergency Management Council proclaim a local emergency; and

WHEREAS, a novel coronavirus, COVID-19, which causes infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases death, has arisen in China and spread to numerous other countries including the United States; and

WHEREAS, the Centers for Disease Control and Prevention has determined the virus to be a very serious public health threat, yet the method and efficacy of transmission of the virus is not yet fully understood and no vaccine currently exists; and

WHEREAS, Orange County has a population of over 3 million residents, is a major tourist destination, has a high volume airport within its jurisdiction and is a significant

destination for business travel all resulting in high volumes of foreign and domestic travelers traveling into and out of the County, which has the potential to result in significant spreading of the disease; and

WHEREAS, the Health Officer of the County of Orange has determined that the County is preparing for an imminent and proximate threat to public health from the virus; and

WHEREAS, communities within the geographic boundaries of Orange County have and will continue to prepare and, as necessary, take significant response actions to any developing contagion and to any other risks that may arise from introduction and possible spread of the virus;

WHEREAS, the above described events are creating a condition of extreme peril to the safety of persons and property within the territorial limits of the County of Orange which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of the County of Orange, and require the combined forces of other political subdivisions to combat;

IT IS HEREBY PROCLAIMED that a local emergency exists within the geographic area of Orange County;

IT IS FURTHER PROCLAIMED AND ORDERED that as of this date all County departments and agencies take those actions, measures and steps deemed necessary to assure the safety and welfare of Orange County residents and property, including requesting mutual aid to the extent such aid is necessary and utilizing EOC Cal Cards and any other available funding stream to acquire resources determined by the DES or an authorized emergency purchaser as necessary to respond to this declared emergency.

ACCORDINGLY, THE CHAIR OF THE BOARD OF SUPERVISORS ACTING AS THE CHAIR OF THE EMERGENCY MANAGEMENT COUNCIL HEREBY REQUESTS that the Governor declare a State of Emergency and make all relevant funds available to the County of Orange and all eligible community members and businesses, including but not limited to, California Disaster Assistance Act funds and State Private Nonprofit Organizations Assistance Program funds, and that the Governor request that the President of the United States make a Presidential Declaration of Emergency in and for the County of Orange and make all relevant funds available to the County of Orange and all eligible community members and businesses, including, but not limited to, aid provided by the Small Business Administration.

Date: 2/26/20

Signed: 

Michelle Steel,  
Chairwoman of the Board of Supervisors Acting as  
the Chair of the Emergency Management Council  
County of Orange

Attachment A

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA  
March 2, 2020

WHEREAS, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, non-communicable biologic agent, toxin, or radioactive agent;

WHEREAS, on February 26, 2020, the County's Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of a novel coronavirus (named "COVID-19") in Orange County.

WHEREAS, under Health and Safety Code Section 101080, the local health emergency shall not remain in effect for more than seven days unless ratified by the Board of Supervisors;

WHEREAS, the Board of Supervisors hereby finds that there continues to exist an imminent and proximate threat to public health from the introduction of COVID-19 in Orange County for reasons set forth in the declaration of local health emergency by County's Health Officer, dated February 26, 2020;

NOW, THEREFORE, BE IT RESOLVED by the Orange County Board of Supervisors that:

1. The local health emergency declared by the County's Health Officer on February 26, 2020 is hereby ratified. Under Health and Safety Code Section 101080, the local health emergency may remain in effect for no more than 30 days from the date of this Resolution.
2. The County's Health Officer is directed to bring for review by the Board of Supervisors the need for continuing the local health emergency no later than the date


coinciding with the expiration of this Resolution

3. The Board of Supervisors delegates authority to the County's Health Officer to terminate the local health emergency, pursuant to Health and Safety Code Section 101080, "at the earliest possible date that conditions warrant the terminations."
4. All County departments and agencies take those actions, measures, and steps deemed necessary to assure the health, safety and welfare of Orange County citizens and property, including requesting mutual aid to the extent such aid is necessary.

///

///

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By   
Deputy  
Date 2/27/20

Attachment C

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA  
March 2, 2020

WHEREAS, Government Code section 8630 and section 3-1-6(a) of the Codified Ordinances of the County of Orange empower the Director of Emergency Services to request the Chair of the Emergency Management Council to proclaim the existence or threatened existence of a local emergency, subject to ratification by the Board of Supervisors within seven days; and

WHEREAS, a novel coronavirus, COVID-19, which causes infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases death, has arisen in China and spread to numerous other countries including the United States; and

WHEREAS, the Centers for Disease Control and Prevention has determined the virus to be a very serious public health threat, yet the method and efficacy of transmission of the virus is not yet fully understood and no vaccine currently exists; and

WHEREAS, Orange County has a population of over 3 million residents, is a major tourist destination, has a high volume airport within its jurisdiction and is a significant destination for business travel all resulting in high volumes of foreign and domestic travelers traveling into and out of the County, which has the potential to result in significant spreading of the disease; and

WHEREAS, the Health Officer of the County of Orange has determined that the County is preparing for an imminent and proximate threat to public health from the virus; and

WHEREAS, communities within the geographic boundaries of Orange County have and will continue to prepare and, as necessary, take significant response actions to any developing contagion and to any other risks that may arise from introduction and possible spread of the virus;

Attachment C

WHEREAS, the above described events are creating conditions of extreme peril and such conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the County, requiring the combined forces of other political subdivisions to combat;  
and

WHEREAS, at the request of the Director of Emergency Services, the Chair of the Emergency Management Council, on February 26, 2020, did proclaim the existence of local emergency within the County of Orange; and

WHEREAS, the Board of Supervisors does hereby find that the aforesaid conditions of extreme peril did warrant and necessitate the proclamation of the existence of a local emergency;  
and

WHEREAS, the Board of Supervisors also finds a local emergency does exist and shall be deemed to continue to exist until its termination is proclaimed by the Board of Supervisors;

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors does hereby ratify the Chair of the Emergency Management Council's February 26, 2020, Proclamation of a Local Emergency.

BE IT FURTHER RESOLVED that all powers, functions, and duties of the emergency organization of the County of Orange shall be vested in such persons as prescribed by federal and state law, by County ordinances and resolutions, and by the Orange County Emergency Plan now in effect.

BE IT FURTHER RESOLVED that all County departments and agencies take those actions, measures, and steps deemed necessary to assure the safety and welfare of Orange County citizens and property, including requesting mutual aid to the extent such aid is necessary.

///

///

Resolution No. \_\_\_\_\_ Item No. \_\_\_\_\_  
Proclamation of a Local Emergency

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By [Signature]  
Deputy  
Date 2/27/20



EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

**WHEREAS** in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

**WHEREAS** the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

**WHEREAS** on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

**WHEREAS** on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

**WHEREAS** the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

**WHEREAS** as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

**WHEREAS** as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

**WHEREAS** for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

**WHEREAS** California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and



**WHEREAS** experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

**WHEREAS** it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

**WHEREAS** if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

**WHEREAS** personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

**WHEREAS** state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

**WHEREAS** I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

**WHEREAS** I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.



**IT IS HEREBY ORDERED THAT:**

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and



notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The



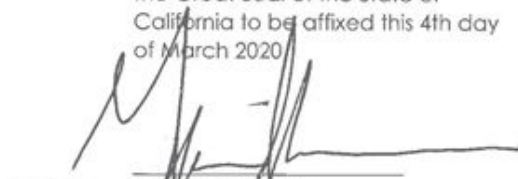
notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020.

  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State





California Department of Industrial Relations  
Division of Occupational Safety & Health

## **UPDATE - COVID-19 Prevention Emergency Temporary Standards** **What Employers Need to Know About the December 16 Standards**

**December 16, 2021**

On December 16, the Occupational Safety and Health Standards Board readopted the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards (ETS) for the second time. These emergency standards include important revisions to make the workplace rules consistent with the latest requirements and recommendations from the California Department of Public Health (CDPH). The emergency standards take effect on **January 14, 2022**, and apply to most workers in California not covered by the [Aerosol Transmissible Diseases standard](#).

### **Some important requirements that remain unchanged in the COVID-19 Emergency Temporary Standards:**

- Employers must establish, implement, and maintain an effective written COVID-19 Prevention Program that includes:
  - Identifying and evaluating employee exposures to COVID-19 health hazards.
  - Implementing effective policies and procedures to correct unsafe and unhealthy conditions.
  - Allowing adequate time for handwashing and cleaning frequently touched surfaces and objects.
- Employers must provide effective training and instruction to employees on how COVID-19 is spread, infection prevention techniques, and information regarding COVID-19-related benefits that affected employees may be entitled to under applicable federal, state, or local laws.

### **Important revisions to the COVID-19 Prevention Emergency Temporary Standards include:**

#### **Investigating and responding to COVID-19 cases in the workplace**

Employers must continue to properly notify employees, employee representatives and any other workers at a worksite of possible COVID-19 exposures within one business day. This section was updated to give employers more clear instructions on how to notify workers who were at the same worksite as the COVID-19 case during the high-risk exposure period.

#### **Face Coverings**

Employees who are exempted from wearing a face covering due to a medical or mental health condition, or disability and cannot wear a non-restrictive alternative must physically distance at least six feet from others and either be fully vaccinated or tested at least weekly for COVID-19.

**Note:** The testing must be during paid time and at no cost to the employee.

*(continued on next page)*

## Testing and Exclusion

- Employers are now required to make COVID-19 testing available at no cost and during paid time to employees who were fully vaccinated before the “close contact” with a COVID-19 case occurred, even if they are asymptomatic.
- During outbreaks and major outbreaks, employers must now make weekly testing (outbreaks) or twice-weekly testing (major outbreaks) available to asymptomatic fully vaccinated employees in the exposed group
- Employees who have recently recovered from COVID-19 and those who are fully vaccinated are not required to be excluded from the workplace after “close contact” but must wear a face covering and maintain six feet of physical distancing for 14 calendar days following the last date of contact.

## Return to Work Criteria

The period of time before an employee can return to work after “close contact” or COVID-19 illness has been revised to be consistent with current CDPH guidelines. These time frames will automatically update if CDPH updates their guidelines pursuant to the Governor’s executive order.

## Definitions

- “Worksite” now specifically excludes the employee’s personal residence, locations where an employee works alone, and remote work locations chosen by the employee.
- Definitions revised to be more consistent with federal OSHA, including:
  - “COVID-19 test” now includes specific instructions for workers using a test at home with self-read results. The employer or a telehealth professional must observe the test results.
  - “Face coverings” was updated to include more specific detail on the different types of acceptable face coverings.
  - “Fully vaccinated,” now mentions the minimal amount of time workers need to wait between the first and second shot of a two-dose vaccine.

This guidance is an overview, for full requirements see Title 8 sections [3205](#), [3205.1](#), [3205.2](#), [3205.3](#), [3205.4](#)





## COVID-19

We have the tools to  
**Fight Omicron**



# How to Protect Yourself & Others

Updated Nov. 29, 2021

CDC has updated isolation and quarantine recommendations for the public. These recommendations do not apply to [healthcare personnel](#) and do not supersede state, local, tribal, or territorial laws, rules, and regulations. Read [CDC's media statement](#). [Spanish](#)

## Protect Family Members

Some members in your family may need to continue to take steps to protect themselves from COVID-19, including

- Anyone not fully vaccinated, including children under 5 years who are not eligible for COVID-19 vaccines.
- People with weakened immune systems or underlying medical conditions.



[Protect Your Family](#)





## Get Vaccinated

- Authorized COVID-19 vaccines can help protect you from COVID-19.
- You should get a [COVID-19 vaccine as soon as you can](#).
- [Once you are fully vaccinated](#), you may be able to start doing some things that you had stopped doing because of the pandemic.



## Wear a mask

- Everyone 2 years or older who is not fully vaccinated should [wear a mask](#) in indoor public places.
- In general, you do not need to wear a mask in outdoor settings.
  - In areas with [high numbers of COVID-19 cases](#), consider wearing a mask in crowded outdoor settings and for activities with [close contact](#) with others who are not fully vaccinated.
- People who have a condition or are taking medications that weaken their immune system may not be fully protected even if they are fully vaccinated. They should continue to take all [precautions recommended for unvaccinated people, including wearing a well-fitted mask](#), until advised otherwise by their healthcare provider.
- If you are fully vaccinated, to maximize protection and prevent possibly spreading COVID-19 to others, wear a mask indoors in public if you are in an area [of substantial or high transmission](#).

[Wearing a mask over your nose and mouth is required](#) on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and while indoors at U.S. transportation hubs such as airports and stations. Travelers are not required to wear a mask in outdoor areas of a conveyance (like on open deck areas of a ferry or the uncovered top deck of a bus).



## COVID-19 County Check

Find community transmission levels and masking guidance by county.

Select a Location



### Stay 6 feet away from others

- **Inside your home**
  - Avoid close contact with people who are sick.
  - If possible, maintain 6 feet between the person who is sick and other household members.
- **Outside your home**
  - Remember that some people without symptoms may be able to spread virus.
  - Stay at least 6 feet (about 2 arm lengths) from other people, especially if you are at higher risk of getting very sick.



### Avoid crowds and poorly ventilated spaces

- Being in crowded places like restaurants, bars, fitness centers, or movie theaters puts you at higher risk for COVID-19.
- Avoid indoor spaces that do not offer fresh air from the outdoors as much as possible.
- If indoors, [bring in fresh air](#) by opening windows and doors, if possible.



### Test to prevent spread to others

- Testing can give you information about your risk of spreading COVID-19.
- You can choose from many different [types of tests](#).
- Regardless of the test type you select, a [positive test result](#) means that you have an infection and should [isolate](#) and inform your [close contacts](#) to avoid spreading disease to others.
- Over-the-counter [self-tests](#) can be used at home or anywhere,

are easy to use, and produce rapid results. Anyone can use self-tests, regardless of vaccination status or whether they have symptoms or not.

- Consider using a self-test before joining indoor gatherings with others who are not in your household.
  - A positive self-test result means that you have an infection and should avoid indoor gatherings to reduce the risk of spreading disease to someone else.
  - A negative self-test result means that you may not have an infection. Repeating the test with at least 24 hours between tests will increase the confidence that you are not infected.
  - Ask your healthcare provider if you need help interpreting your test results.



## Wash your hands often

- **Wash your hands** often with soap and water for at least 20 seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
- It's especially important to wash your hands:
  - Before eating or preparing food
  - Before touching your face
  - After using the restroom
  - After leaving a public place
  - After blowing your nose, coughing, or sneezing
  - After handling your mask
  - After changing a diaper
  - After caring for someone sick
  - After touching animals or pets
- If soap and water are not readily available, **use a hand sanitizer that contains at least 60% alcohol**. Cover all surfaces of your hands and rub them together until they feel dry.
- **Avoid touching your eyes, nose, and mouth** with unwashed hands.




## Cover coughs and sneezes

- **If you are wearing a mask:** You can cough or sneeze into your mask. Put on a new, clean mask as soon as possible and wash your hands.
- **If you are not wearing a mask:**
  - Always cover your mouth and nose with a tissue when you cough or sneeze, or use the inside of your elbow and do not spit.
  - Throw used tissues in the trash.
  - Immediately **wash your hands** with soap and water for at least 20 seconds. If soap and water are not readily available, clean your hands with a hand sanitizer that contains at least 60% alcohol.



## Clean and disinfect

- Clean high touch surfaces regularly or as needed and after you have visitors in your home. This includes tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, and sinks.
- **If someone is sick or has tested positive for COVID-19, disinfect frequently touched surfaces.**
  - Use a household disinfectant product from [EPA's List N: Disinfectants for Coronavirus \(COVID-19\)](#)  according to manufacturer's labeled directions.
  - **If surfaces are dirty, clean them** using detergent or soap and water prior to disinfection.



## Monitor your health daily

- **Be alert for symptoms:**
  - Watch for fever, cough, shortness of breath, or **other symptoms of COVID-19**.
  - **Take your temperature** if symptoms develop.
  - Don't take your temperature within 30 minutes of exercising or after taking medications that could lower your temperature, like acetaminophen.
  - Follow **CDC guidance** if symptoms develop.
- Monitoring symptoms is especially important if you are running errands, going into the office or workplace, and in settings where it may be difficult to keep a physical distance of 6 feet.

### Additional Resources

#### Help protect yourself and others



 [PDF - 263 KB, 1 page]


#### Slow the Spread of COVID-19



 [PDF - 1 page]

#### How to Protect Yourself and Others



English   
Spanish 

#### Stop the Spread of Germs



 [PDF - 537 KB, 1 page]

## Related Pages

[Prevent Getting Sick](#)

[Symptoms](#)

[How COVID-19 Spreads](#)

[If You Are Sick or Caring for Someone](#)

[People at Increased Risk](#)

[Frequently Asked Questions](#)

[Hand Sanitizer Use](#)

[Quarantine and Isolation](#)

Last Updated Nov. 29, 2021  
Content source: [National Center for Immunization and Respiratory Diseases \(NCIRD\)](#), Division of Viral Diseases

**COUNTY OF ORANGE HEALTH OFFICER'S  
ORDERS AND STRONG RECOMMENDATIONS**

(Revised December 31, 2021)

In light of the recent quarantine and isolation guidelines announced/issued by Centers for Disease Control and Preventions (CDC) and California Department of Public Health (CDPH), the following Orders and Strong Recommendations shall revise and replace the prior Orders and Strong Recommendations of the County Health Officer that were issued on December 23, 2021. The Orders and Strong Recommendations issued on December 23, 2021, are no longer in effect as of December 31, 2021.

Pursuant to California Health and Safety Code sections 101030, 101040, 101470, 120175, and 120130, the County Health Officer for County of Orange orders and strongly recommends the following:

**ORDERS**

Effective immediately, and continuing until further notice, the following shall be in effect in unincorporated and incorporated territories of Orange County, California:

- I. **Self-Isolation and Self-Quarantine Orders**  
A. **Self-isolation of Persons with COVID-19.**

*NOTE: This self-isolation order DOES NOT in any way restrict access by first responders to an isolation site during an emergency.*

**Persons with COVID-19 who have symptoms.** All Orange County residents and visitors *with COVID-19 who are symptomatic* (as defined below) shall immediately isolate themselves in their home or another residence. They may discontinue self-isolation under the following conditions:

- At least 5 days have passed since symptom onset; AND
- At least 24 hours have passed since resolution of fever without the use of fever-reducing medications; AND
- Other symptoms have improved (except that loss of taste and smell may persist for weeks or months after recovery and need not delay the end of isolation); AND
- A US Food and Drug Administration (FDA) approved/authorized COVID-19 test (antigen testing is preferred) is negative on or after day 5 from symptom onset

**10 Day Isolation Required:** If a person *with COVID-19 who is symptomatic* (as defined below) is either unable to test or chooses not to test, he or she shall isolate for 10 days from symptom onset.

All persons *with COVID-19 who are symptomatic* (as defined below) should continue to wear a well-fitting mask around other people through at least day 10 from symptom onset.

**Persons who have COVID-19 without symptoms.** All Orange County residents and visitors *with COVID-19 who are asymptomatic* (i.e., they do not have any symptom(s), as defined below) shall isolate themselves immediately in their home or another residence. They may discontinue self-isolation under the following conditions:

- At least 5 days have passed since the first positive COVID-19 PCR; AND
- An FDA approved/authorized COVID-19 test (antigen testing is preferred) is negative on or after day 5 from symptom onset

**10 Day Isolation Required:** If a person *with COVID-19 who is asymptomatic* (i.e., they do not have any symptom(s), as defined below) is either unable to test or chooses not to test, he or she shall isolate for 10 days from symptom onset.

All persons *with COVID-19 who are asymptomatic* (i.e., they do not have any symptom(s), as defined below) should continue to wear a well-fitting mask around other people through at least day 10 from symptom onset.

**Additional Considerations.**

- A Person who is self-isolated may not leave his or her place of isolation except to receive necessary medical care.
- If a more specific and individualized isolation order is issued by the County Health Officer for any county resident, the resident shall follow the specific order instead of the order herein.
- People who are severely ill with COVID-19 might need to stay in self-isolation longer than 5 days and up to 20 days after symptoms first appeared. People with weakened immune systems should talk to their healthcare provider for more information.

**Definition.**

A person is considered to be "*with COVID-19*" if the person has:

- Received a positive COVID-19 result from test that has been approved/authorized by the FDA; AND/OR
- Exhibits symptoms of COVID-19; AND
- Has known exposure to an individual with COVID-19..

People with COVID-19 have had a wide range of symptoms reported – ranging from mild symptoms to severe illness. Symptoms may appear 2-14 days after



exposure to the virus. Anyone can have mild to severe symptoms. People with these symptoms may have COVID-19:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

The list above does not include all possible symptoms.

**B. Self-Quarantine of Persons Exposed to COVID-19 and Exemptions.**

*NOTE: The self-quarantine orders and exemptions below DO NOT in any way restrict access by first responders to a quarantine site during an emergency.*

All Orange County residents and visitors who are *not-up-to-date* (as defined below) and who know that they have been in close contact (within 6 feet of someone for a cumulative total of 15 minutes or more over a 24-hour period) with a person who has, or is suspected to have, COVID-19 and who do not have any symptoms (as defined above) shall quarantine:

- For at least 5 days from the date of last contact with a person who has COVID-19, if:
  - No symptoms have developed; AND
  - An FDA approved/authorized COVID-19 test (antigen testing is preferred) is negative on or after day 5.

Persons are considered *not-up-to-date* if they:

- Are unvaccinated for COVID-19; OR
- Have not completed a primary series with any COVID-19 vaccine; OR
- Completed a primary series of Pfizer or Moderna COVID-19 vaccines more than six months ago and are not boosted; OR
- Completed a primary series with Johnson & Johnson/Janssen vaccine more than 2 months ago and are not boosted.

All persons who are exposed to COVID-19 and who are not-up-to-date (as defined below) should continue to wear a well-fitting mask around other people through at least day 10 after most recent exposure.

**10 Day Quarantine Required:** If a person *who is exposed to COVID-19 and who is not-up-to-date (as defined below)* is either unable to test or chooses not to test, he or she shall quarantine for 10 days after most recent exposure.

**Exemptions from Quarantine**

1. Asymptomatic up-to-date Persons. Persons who are *up-to-date* (as defined above) prior to their close contact with a person with COVID-19 and have not developed any symptoms (as defined in the Isolation Section, above) since their exposure are not required to quarantine are not subject to the quarantine requirements in this Order.
2. Asymptomatic Persons Previously Infected. If an exposed person tested positive for COVID-19 before their new, recent close contact with a person with COVID-19 and it has been less than 3 months since they started having symptoms from that previous infection (or since their first positive COVID-19 test if asymptomatic), they do not need to quarantine, as long as they have not had any new symptoms since their recent exposure to COVID-19.
3. Exposed Asymptomatic First Responders. During critical staffing shortages, exposed first responders who do not have any symptoms (as defined above in Isolation Section, above), are not subject to the quarantine requirements in this Order. These individuals should wear a well-fitting mask at all times when around others for at least 10-days after most recent exposure and monitor for symptoms of COVID-19.
4. Quarantine of Students in both Private and Public Transitional Kindergarten through Grade 12. Students in both private and public transitional kindergarten through grade 12 shall follow the isolation and self-quarantine guidance above with the following exemption:

**Modified Quarantine.** If a *not-up-to-date* (as defined above) student is exposed to a person with COVID-19 and both were wearing face covering then the exposed student may continue to attend school for in-person instruction during the duration of his or her quarantine period if the following conditions are met:

- The exposed student is asymptomatic; AND
- The exposed student continues to appropriately wear well-fitting face covering; AND
- The exposed student undergoes testing at least twice during his or her quarantine period of 5 days; AND

- The exposed student refrains from participation in all extracurricular activities at school, including sports, and activities within the community setting for the duration of his or her quarantine period. The exposed student may participate in all required instructional components of the school day, except activities where a mask cannot be worn, such as while playing certain musical instruments. The exposed student may also eat meals on campus.

**10 Day Quarantine Required:** If an *exposed not-up-to-date student* is either unable to test or chooses not to test, he or she shall quarantine for 10 days after most recent exposure.

5. Acute Care Hospital, Acute Psychiatric Hospital, and Skilled Nursing Facility, Staff Shortage.

- Modification of quarantine for exposed staff: Acute Care Hospitals, Acute Psychiatric Hospitals, and Skilled Nursing Facilities that are experiencing staff shortage and therefore are unable to otherwise provide safe patient care at their facilities may allow asymptomatic health care providers, who are not-up-to-date (as defined above) and who have had a higher-risk exposure to COVID-19 but are not known to be infected to continue to work onsite at their facilities throughout their 14-day exposure period. These health care providers shall be monitored for symptoms for COVID-19 and shall immediately isolate as consistent with the isolation order above if any symptoms develop (as defined above). These facilities are to make this staffing shortage determination in collaboration with their human resources and occupational health services.
- Modification of isolation for ill staff: During critical staffing shortages that persist despite other mitigation strategies, as a last resort hospitals may consider allowing staff with suspected or confirmed COVID-19 infection who are well enough and willing to work but have not met all Return to Work Criteria to work, if the hospital follows [CDC Guidance on Mitigating Staffing Shortages](#) and California Department of Public Health All Facilities Letter 21.08.6, as applicable.

Additional Consideration for Quarantine.

- Testing After Exposure. All individuals should test for COVID-19 (antigen test preferred) 5 days after their most recent exposure.
  - If they test positive, they shall immediately self-isolate, as ordered above, and contact their healthcare provider with any questions regarding their care.
  - If they test negative, they shall continue monitoring their symptoms.
  - Self-monitor for COVID-19 symptoms through Day 14; if symptoms occur, immediately isolate as ordered above and contact the Orange

County Health Care Agency or their healthcare provider and seek COVID-19 testing.

- Continue Wearing Mask. All persons *with COVID-19 who are symptomatic* (as defined below) should continue to wear a well-fitting mask around other people through at least day 10 from symptom onset.

## II. Face-Covering Order:

- **Wear a Cloth Face-Covering**. To help prevent the spread of droplets containing COVID-19, all County residents and visitors shall wear face coverings in accordance with and as required by the Guidance for the Use of Face Coverings issued by CDPH, effective December 15, 2021. The Guidance is attached herein as Attachment "A" and can be found at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>.

The Guidance orders, as follows:

### Masking Requirements.

Masks are required for all individuals in all indoor public settings, regardless of vaccination status from December 15, 2021, through January 15, 2022. Full guidance can be found

at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Get-the-Most-out-of-Masking.aspx>.

In workplaces, employers are subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS) or in some workplaces the Cal/OSHA Aerosol Transmissible Diseases (ATD) Standard and should consult those regulations for additional applicable requirements.

See State Health Officer Order, issued on July 26, 2021

(<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx>), for a full list of high-risk congregate and other healthcare settings where surgical masks are required for unvaccinated workers, and recommendations for respirator use for unvaccinated workers in healthcare and long-term care facilities in situations or settings not covered by Cal OSHA ETS or ATD.

No person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business.

Exemptions to masks requirements.

The following individuals are exempt from wearing masks at all times:

- Persons younger than two years old. Very young children must not wear a mask because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

The County Health Officer strongly recommends that all mask wearers consistently and correctly wear a mask that offers good filtration to get the best protection. To improve efficacy, the mask should fit to minimize gaps between the face and mask. The mask should also fully cover the nose and mouth. If wearing a fabric face covering, three layers should be worn to offer better filtration.

The County Health Officer also strongly recommends wearing a face shield for members of the public who cannot wear a face covering due to a medical condition or other exemption (except for children younger than 2 years old), although they may not work as well as face coverings in their ability to prevent the spread of COVID-19 to others. A cloth “drape” should be attached to the bottom edge of the face shield and tucked into the shirt to minimize gaps between the face and face shield.

**Vaccination and Testing for COVID-19 Orders:**

0. **COVID-19 Vaccination for Workers and Service Providers of Certain Facilities.**

To help prevent transmission of COVID-19, all workers who provide services or work in facilities described below shall comply with the COVID-19 vaccination and booster dose requirements as set forth in the December 22, 2021, State Health Officer Order. A copy of the State Health Officer Order is attached herein as Attachment "B" and can be found at the following link:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx>

Facilities covered by this order include:

- General Acute Care Hospitals
- Skilled Nursing Facilities (including Subacute Facilities)
- Intermediate Care Facilities
- Acute Psychiatric Hospitals
- Adult Day Health Care Centers
- Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
- Ambulatory Surgery Centers
- Chemical Dependency Recovery Hospitals
- Clinics & Doctor Offices (including behavioral health, surgical)
- Congregate Living Health Facilities
- Dialysis Centers
- Hospice Facilities
- Pediatric Day Health and Respite Care Facilities
- Residential Substance Use Treatment and Mental Health Treatment Facilities

The word, "worker," as used in this Order shall have the same meaning as defined in the State Health Officer's Order, dated December 22,

2021. See <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx>

1. **Requirements for COVID-19 Vaccination Status Verification, COVID-19 Testing, and Masking for Certain Facilities.**

To help prevent transmission of COVID-19, all facilities described below shall comply with the State Health Officer Order, effective August 9, 2021. A copy of the State Health Officer Order is attached herein as Attachment "C" and can be found at the following link:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx>

Facilities covered by this order include:

Acute Health Care and Long-Term Care Settings:

- General Acute Care Hospitals
- Skilled Nursing Facilities (including Subacute Facilities)
- Intermediate Care Facilities

High-Risk Congregate Settings:

- Adult and Senior Care Facilities
- Homeless Shelters
- State and Local Correctional Facilities and Detention Centers

Other Health Care Settings:

- Acute Psychiatric Hospitals
- Adult Day Health Care Centers
- Adult Day Programs Licensed by the California Department of Social Services
- Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
- Ambulatory Surgery Centers
- Chemical Dependency Recovery Hospitals
- Clinics & Doctor Offices (including behavioral health, surgical)
- Congregate Living Health Facilities
- Dental Offices
- Dialysis Centers
- Hospice Facilities
- Pediatric Day Health and Respite Care Facilities
- Residential Substance Use Treatment and Mental Health Treatment Facilities

2. **Requirements for COVID-19 Vaccine Status Verification and COVID-19 Testing for School Workers in Transitional Kindergarten through Grade 12.**  
To prevent the further spread of COVID-19 in K-12 school settings, all public and private schools serving students in transitional kindergarten through grade 12 shall comply with the State Health Officer Order, effective August 12, 2021, regarding verification of COVID-19 vaccination status and COVID-19 testing of all workers. A copy of the State Health Officer Order is attached herein as Attachment "D" and can be found at the following link:  
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Vaccine-Verification-for-Workers-in-Schools.aspx>  
This Order does not apply to (i) home schools, (ii) child care settings, or (iii) higher education.
3. **Local Correctional Facilities and Detention Centers Health Care Worker Vaccination Requirement.**  
To prevent the further spread of COVID-19 in local correctional facilities and detention centers, all individuals identified in the State Health Officer Order, effective December 22, 2021, shall comply with the State Health Officer's Order with regards to obtaining COVID-19 vaccination and booster doses. A copy of the State Health Officer Order is attached herein as Attachment "E" and can be found at the following link:  
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx>
4. **Adult Care Facilities and Direct Care Worker Vaccination Requirements.**  
To help prevent transmission of COVID-19, all individuals specified below shall comply with the COVID-19 vaccination and booster does requirements as set forth in the December 22, 2021, State Health Officer Order. A copy of the State Health Officer Order is attached herein as Attachment "F" and can be found at the following link:  
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Adult-Care-Facilities-and-Direct-Care-Worker-Vaccine-Requirement.aspx>  
Individuals covered by this order include:
  - All workers who provide services or work in Adult and Senior Care Facilities licensed by the California Department of Social Services;
  - All in-home direct care services workers, including registered home care aides and certified home health aides, except for those workers who only



provide services to a recipient with whom they live or who are a family member of the recipient for whom they provide services;

- All waiver personal care services (WPCS) providers, as defined by the California Department of Health Care Services, and in-home supportive services (IHSS) providers, as defined by the California Department of Social Services, except for those workers who only provide services to a recipient with whom they live or who are a family member of the recipient for whom they provide services;
- All hospice workers who are providing services in the home or in a licensed facility; and
- All regional center employees, as well as service provider workers, who provide services to a consumer through the network of Regional Centers serving individuals with developmental and intellectual disabilities, except for those workers who only provide services to a recipient with whom they live or who are a family member of the recipient for whom they provide services.

### **Visiting Acute Health Care and Long-Term Care Setting Order:**

#### **Requirements for Visiting Acute Health Care and Long-Term Care Settings.**

To help prevent transmission of COVID-19, all acute health care and long-term care settings shall comply with the indoor visitation requirements set forth in the State Health Officer, effective August 11, 2021. A copy of the State Health Officer Order is attached herein as Attachment "G" and can be found at the following link:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Requirements-for-Visitors-in-Acute-Health-Care-and-Long-Term-Care-Settings.aspx>

### **Seasonal Flu Vaccination Order:**

#### **Seasonal Flu Vaccination for Certain County Residents.**

All individuals who reside or work in Orange County and fall under one of the following categories, shall obtain the seasonal flu vaccination unless a medical or religious exemption applies: (i) current providers for congregate settings; (ii) current health care providers; and (iii) current emergency responders. However, nothing herein shall be construed as an obligation, on the part of employers, public or private, to require employees obtain the seasonal flu vaccination as a term or condition of employment.

- *Emergency responder* shall mean military or national guard; law enforcement officers; correctional institution personnel; fire fighters; emergency medical services personnel; physicians; nurses; public health personnel; emergency

medical technicians; paramedics; emergency management personnel; 911 operators; child welfare workers and service providers; public works personnel; and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency; as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

- *Health care provider* shall mean physicians; psychiatrists; nurses; nurse practitioners; nurse assistants; medical technicians; any other person who is employed to provide diagnostic services, preventive services, treatment services or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care; and employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services; and employees who do not provide direct health care services to a patient but are otherwise integrated into and necessary to the provision those services – for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition. A person is not a health care provider merely because his or her employer provides health care services or because he or she provides a service that affects the provision of health care services. For example, IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers are not health care providers, even if they work at a hospital of a similar health care facility.

### **STRONG RECOMMENDATIONS**

Effective immediately, and continuing until further notice, the following shall be in effect in unincorporated and incorporated territories in Orange County, California:

1. **For Vulnerable Populations.** In general, the older a person is, the more health conditions a person has, and the more severe the conditions, the more important it is to take preventive measures for COVID-19 such as getting vaccinated, including boosters, social distancing and wearing a mask when around people who don't live in the same household, and practicing hand hygiene. For more information, see <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.
2. **COVID-19 Vaccination for County Residents.** All Orange County residents should receive COVID-19 vaccination in accordance with the Federal Food and Drug Administration (FDA) and CDC guidance unless a medical contraindication applies. Minors, who are eligible to receive COVID-19 vaccination in accordance with the applicable CDC guidelines, should be vaccinated in the presence of their parent or legal guardian.
3. **Seasonal Flu Vaccination for County Residents.** All County residents who are six months of age or older should obtain the seasonal flu vaccination unless a medical or religious exemption applies.

4. **COVID-19 Vaccination and Testing for Emergency Medical Technicians, Paramedics and Home Healthcare Providers.** To help prevent transmission of COVID-19, it is strongly recommended that all Emergency Medical Technicians, Paramedics, and Home Healthcare Providers (including In Home Supportive Services Program workers) are fully vaccinated by September 30, 2021.

Furthermore, it is strongly recommended that all unvaccinated Emergency Medical Technicians, Paramedics, and Home Healthcare Providers (including In Home Supportive Services Program workers) undergo at least twice weekly testing for COVID-19 until such time they are fully vaccinated.

### **GENERAL PROVISIONS**

1. The Orders and Strong Recommendations, above, shall not supersede any conflicting or more restrictive orders issued by the State of California or federal government. If any portion of this document or the application thereof to any person or circumstance is held to be invalid, the remainder of the document, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of the orders and strong recommendations are severable.
2. The Orders contained in this document may be enforced by the Orange County Sheriff or Chiefs of Police pursuant to California Health and Safety Code section 101029, and California Government Code sections 26602 and 41601. A violation of a health order is subject to fine, imprisonment, or both (California Health and Safety Code section 120295).

### **REASONS FOR THE ORDERS AND STRONG RECOMMENDATIONS**

1. On February 26, 2020, the County of Orange Health Officer declared a Local Health Emergency based on an imminent and proximate threat to public health from the introduction of COVID-19 in Orange County.
2. On February 26, 2020, the Chairwoman of the Board of Supervisors, acting as the Chair of Emergency Management Council, proclaimed a Local Emergency in that the imminent and proximate threat to public health from the introduction of COVID-19 created conditions of extreme peril to the safety of persons and property within the territorial limits of Orange County.
3. On March 2, 2020, the Orange County Board of Supervisors adopted Resolutions No. 20-011 and No. 20-012 ratifying the Local Health Emergency and Local Emergency, referenced above.
4. On March 4, 2020, the Governor of the State of California declared a State of Emergency to exist in California as a result of the threat of COVID-19.
5. As of December 31, 2021, the County has reported a total of 339,525 recorded confirmed COVID-19 cases and 5,890 of COVID-19 related deaths.
6. Safe and effective authorized COVID-19 vaccines are recommended by the CDC. According to CDC, anyone infected with COVID-19 can spread it, even if they do NOT

have symptoms. The novel coronavirus is spread in 3 ways: 1) Breathing in air when close to an infected person who is exhaling small droplets and particles that contain the virus. 2) Having these small droplets and particles that contain virus land on the eyes, nose, or mouth, especially through splashes and sprays like a cough or sneeze. 3) Touching eyes, nose, or mouth with hands that have the virus on them. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

7. CDC requires face coverings on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and in U.S. transportation hubs such as airports and stations. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>.
8. The CDPH issued a revised Guidance for the Use of Face Coverings, effective December 15, 2021, available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>
9. According to the CDC and CDPH, older adults, individuals with medical conditions, and pregnant and recently pregnant persons are at higher risk of severe illness when they contract COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>; see also <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/PublicHealthGuidanceSelfIsolationforOlderAdultsandThoseWhoHaveElevatedRisk.aspx>.
10. The Orders and the Strong Recommendations contained in this document are based on the following facts, in addition to the facts stated under the foregoing paragraphs: (i) Safe and effective FDA authorized COVID-19 vaccines have become widely available, but many Orange County residents have not yet had the opportunity to be vaccinated, or have not completed their vaccination series to be fully vaccinated; (ii) there are currently limited therapeutic options proven effective that consistently prevents the severe illness associated with COVID-19; (iii) the current consensus among public health officials for slowing down the transmission of and avoiding contracting COVID-19 is for unvaccinated persons to avoid gathering and practice social distancing, frequently wash hands with soap, wearing face covering and get vaccinated; (iv) some individuals who contract COVID-19 have no symptoms or have only mild symptoms and so are unaware that they carry the virus and are transmitting it to others; (v) current evidence shows that the novel coronavirus can survive on surfaces and can be indirectly transmitted between individuals; (vi) older adults and individuals with medical conditions are at higher risk of severe illness; (vii) sustained COVID-19 community transmission continues to occur; (viii) the age, condition, and health of a significant portion of Orange County's residents place them at risk for serious health complications, including hospitalization and death, from COVID-19; (ix) younger and otherwise healthy people are also at risk for serious negative health outcomes and for transmitting the novel coronavirus to others.
11. The orders and strong recommendations contained in this document are necessary and less restrictive preventive measures to control and reduce the spread of COVID-19 in Orange County, help preserve critical and limited healthcare capacity in Orange County and save the lives of Orange County residents.

12. The California Health and Safety Code section 120175 requires the County of Orange Health Officer knowing or having reason to believe that any case of a communicable disease exists or has recently existed within the County to take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.
13. The California Health and Safety Code sections 101030 and 101470 require the county health officer to enforce and observe in the unincorporated territory of the county and within the city boundaries located with a county all of the following: (a) Orders and ordinances of the board of supervisors, pertaining to the public health and sanitary matters; (b) Orders, including quarantine and other regulations, prescribed by the department; and (c) Statutes relating to public health.
14. The California Health and Safety Code section 101040 authorizes the County of Orange Health Officer to take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any "state of war emergency," "state of emergency," or "local emergency," as defined by Section 8558 of the Government Code, within his or her jurisdiction. "Preventive measure" means abatement, correction, removal, or any other protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health.
15. The California Health and Safety Code section 120130 (d) authorizes the County of Orange Health Officer to require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when such action is necessary for the protection of the public health.

**IT IS SO ORDERED:**

Date: December 31, 2021

Clayton Chau MD, PhD  
County Health Officer  
County of Orange



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Jenny Sadoski, Director of Information Technology and Brenda Shott, Assistant CEO, Finance and Internal Operations  
**SUBJECT:** 2022 BUDGET AMENDMENT – IT CAPITAL EXPENDITURES

---

### Recommendation

Approve an amendment to OCERS' Administrative Budget for Fiscal Year 2022 to carryover costs related to the 2021 Business Plan initiatives to upgrade the Board Room Audio/Visual equipment for \$532,000 and implement new backup solutions to enhance recovery of on premise and cloud systems for \$250,000.

### Background/Discussion

OCERS' Amended Administrative Budget for Fiscal Year 2021 included funding for two 2021 Business Plan Initiatives that have been delayed; the upgrade of Board Room Audio/Visual equipment for \$532,000 and implementation of new backup solutions to enhance recovery of on premise and cloud systems in the amount of \$250,000.

COVID-19 supply chain issues have delayed fulfillment of OCERS' Audio Visual equipment orders. This has delayed the overall project pushing implementation and completion out from 2021 until 2022, including payments to the vendor. Timing issues and coordination also delayed procurement of a new enterprise backup solution from December 2021 to January 2022. As a result of these delays, staff requests a budget amendment of \$782,000 to carryover the costs for these two 2021 Business Plan initiatives, increasing the 2022 budget for capital expenditures from \$310,000 to \$1,092,000. This budget amendment would also increase the overall 2022 Administrative Budget from \$33,100,984 to \$33,882,984 and would have no impact to the 21 basis point test as expenditures for capitalized IT costs are excluded from this test.

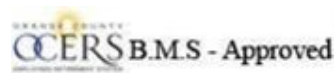
### Submitted by:



---

Jenny Sadoski  
Director of Information Technology

### Approved by:



---

Brenda Shott  
Assistant CEO, Finance and Internal Operations



## Memorandum

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** MCDONALD, KEVIN – REQUEST FOR REDUCTION OF OVERPAID BENEFITS

### **Recommendation:**

Staff recommends that the Board deny the Applicant's request to reduce the overpayment amount of \$3,465.73 owed by the Applicant due to overpaid disability benefits by \$2500.00.

### **Background**

Senior Social Worker, Orange County Social Services Agency  
 Date of entry to OCERS: 04/07/2000  
 Total years of OCERS service: 19.2134  
 Years of reciprocal service: 6.2861  
 Last day of compensation: 07/05/2019  
 Date of disability retirement: 07/06/2019  
 Attorney Designation: Pro Per

This matter was presented to the Board on April 19, 2021 as a request for benefit determination review of the CEO designee's determination. All of the materials associated to the item can be found in the April 19, 2021 meeting materials folders or links. The Board continued the item to allow the Applicant time to work with the County on unresolved payroll matters that could affect his retirement. In working with the County, the Applicant has provided OCERS Staff with updated records related to the 35.55 hours of holiday compensation and vacation time previously denied by OCERS for inclusion in Applicant's Final Average Salary calculation. Because of this new information, OCERS Staff recalculated the Applicant's Final Average Salary and we have confirmed that the Applicant is in agreement with the calculation. The request for administrative review has been withdrawn and is no longer an issue.

After the final recalculation to add the items of compensation referred to above and coordination with San Bernardino County Employees Retirement Associated (SBCERA) it was determined that the Applicant was overpaid disability benefits due to the disability offset. We have calculated the overpayment to be \$3,465.73 and intend on applying a repayment plan in accordance with OCERS Overpaid/Underpaid Plan Benefits policy (Policy). The Applicant has requested that the Board reduce the \$3,465.73 overpayment by \$2,500 to account for the attorney fees he paid his attorney for work performed to secure his Service Connected Disability benefit. Staff denied this request as his payment for services related to his service connected disability are unrelated to the matter of benefit payments, disability offset calculations and the coordination of benefits between reciprocal systems. According to section 8(c) of the Policy:

*Only the Board may compromise claims in which the total amount of such overpaid benefits, not including interest, is greater than \$1,000.*

In the event the Board approves the Applicant's request to compromise the amount due by the requested \$2500 the total overpayment owed by the Applicant would be \$965.75.

**Submitted by:**



SJ-Approved

---

Suzanne Jenike  
Assistant CEO, External Operations



**DATE:** JANUARY 18, 2022

**TO:** Members of the Board of Retirement

**FROM:** Kevin McDonald

**SUBJECT:** Supportive documentation for reduction of overpaid benefits

This letter is in response to the Memorandum dated January 18, 2022, submitted by Suzanne Jenike, Assistant CEO, External Operations, Orange County Employees Retirement System, regarding the "Request for reduction of overpaid benefits."

Ms. Jenike's memorandum does not accurately reflect the request for my reduction of overpaid benefits since it was first brought to my attention in May of 2021. For the Members of the Board of Retirement reference and consideration, I have attached documents showing the email exchanges between myself and OCERS. Below are excerpts from those emails related to overpayment of my benefit:

**August 25, 2021, email sent to OCERS:**

The overpayment you referenced, has no breakdown. I definitely would like to see how it was determined as it does involve a payment made to my previous attorney. The overpayment that OCERS calculated appears to be from an internal OCERS error/oversight as OCERS coordinated my reciprocity with SBCERA.

Additionally, OCERS isn't consistent with how SBCERA handled an overpayment within their system. SBCERA decided to forgo any overpayment prior to the notification of my disability retirement from OCERS, as it seems punitive especially for a retiree with a disability retirement.

I did consult with my previous attorney for some guidance. She did get paid a percentage of the retro the payment I received and this has been a rather complex and lengthy process. As you know, I requested a review of the determination of my retirement benefit back in November 2019 and didn't receive the CEO determination until November 2020. My request for an Administrator Review of the CEO determination was submitted in January 2021. The OCERS Board meeting was in April 2021, and the recalculated benefit is still not finalized. I never imaged that this would still not be finalized. It is very stressful and causes me undue anxiety.

**September 17, 2021, email received from OCERS:**

In response to SBCERA not charging for the previous overpayments to you, every system operates under their own procedures. Overpayments of benefits in our system are not allowed to be written off as they are assets of the plan to pay benefits for the members of the plan.

Regarding the breakdown of the overpayment and the comment about a payment to your attorney, OCERS has never made a payment to your attorney. All overpayments were made directly to you as part of your monthly benefit due to your disability offset required from the reciprocal benefit provided by SBCERA. I will send you the details of this calculation at the beginning of next week.

**October 8, 2021, email sent to OCERS:**

I can attest to and definitely agree that systems operate differently. I also know that understanding and interpretation of the laws pertaining to County Employees Retirement can be ambiguous.

With that said, it is also a bit complex with the payment issue to my attorney.

OCERS is aware that I had legal representation from an attorney regarding my disability retirement application. OCERS is also aware that the retro payment for my disability benefit was sent to my attorney on my behalf. My attorney received a percentage of this retro pay, which OCERS is now declaring as an overpayment. I paid my attorney based on the original retro disability benefit amount received.

OCERS coordinated reciprocity with SBCERA. Knowing that I had reciprocity, OCERS still calculated my disability retro pay incorrectly, without the offset, and only became aware of it when SBCERA contacted OCERS in May of 2021. For the record, I was the one to initially notify SBCERA of my disability retirement.

SBCERA expeditiously recalculated my benefit and only pursued additional benefit paid from June 2021 forward. As I stated before, they determine it would be punitive to collect previously paid benefits, prior to notification that my disability retirement was granted. This seemed fair to me.

I would request that OCERS follow suit and reconsider the calculated amount of retro benefit overpayment. If OCERS collected retro overpayment starting June 2021, it would be consistent with SBCERA and would seem fair and more reasonable. Additionally, it would resolve the situation regarding the payment I made to my attorney, which was based on OCERS original retro payment amount, not the new proposed offsetting calculation.

In summary, I propose the following to resolve my current appeal which is pending before the OCERS Board:

- 1) Include the 16 hours of holiday comp for January 21, 2019, and May 27, 2019, in the amount of \$611.52, in my Final average salary
- 2) Recalculate my benefit, combined allowance, and disability offset

7

3) Recalculate benefit overpayment and collect from June 2021, forward only

If OCERS it's not in agreement with the proposed items listed above, then perhaps it's time to bring the matter before the Board for a final resolution. As mentioned before, this has extended way beyond what I could have imagined and is resulting in additional stress and anxiety for me. Let's this resolved in a fair and equitable manner. Thank you for your understanding.

**November 9, 2021, email received from OCERS:**

I have reviewed your request below. I have not received any information regarding your request to the County regarding the time card issues you had for the two remaining 8 hour days. As such OCERS will not make any additional changes to your final average salary for those days.

I believe that we have made all of the changes to your account that we can make at this time so we will schedule your appeal to come back to the Board on January 18, 2022. If you receive any additional information that is pertinent to your request for the additional 16 hours, we will be happy to review it before that date.

In addition, we will recalculate your benefit to apply the disability offset and will inform you in writing once that has occurred. You will have 90 days from the date of that notification to request administrative view of the determination.

**December 13, 2021, email sent to OCERS:**

I received the Benefit Recalculation with Offset letter dated, December 2, 2021. The Benefit Recalculation with Offset letter is contradictory as the payback amount listed is \$2117.50, but the options given totals \$3791. I assume this is erroneous.

If the amount to collect is \$2117.50, then I would assume this is the amount OCERS is seeking to collect starting in June 2021. If OCERS is seeking to collect \$3791, I remind you, as indicated in the email I sent to you on October 8, 2021, *"OCERS is aware that I had legal representation from an attorney regarding my disability retirement application. OCERS is also aware that the retro payment for my disability benefit was sent to my attorney on my behalf. My attorney received a percentage of this retro pay, which OCERS is now declaring as an overpayment. I paid my attorney based on the original retro disability benefit amount received."*

If OCERS intends to interpret the laws differently than SBCERA and move forward with being punitive by withholding monies I already paid to my attorney, then I see my only option is to seek legal advice and submit a Request For an Administrative Review.

*As I wrote before, "...If OCERS collected retro overpayment starting June 2021, it would be consistent with SBCERA and would seem fair and more reasonable. Additionally, it would resolve the situation regarding the payment I made to my attorney, which was based on OCERS original retro payment amount, not the new proposed offsetting calculation."*

OCERS has not directly addressed my concerns of the amount of stated overpayment. I have communicated with OCERS with the intend to have this resolved in a fair and equitable manner. I request OCERS to do the same, in good faith, by doing the following:

- 1) Include the 16 hours of holiday comp for January 21, 2019, and May 27, 2019, in the amount of \$611.52, in my Final average salary
- 2) Recalculate my benefit, combined allowance, and disability offset
- 3) Recalculate benefit overpayment and collect from June 2021, forward only
- 4) Provide detailed documentation that shows the breakdown of the recalculations

**January 3, 2022, email sent to OCERS:**

Yes, I do plan to attend the Board Meeting as I don't agree with the amount of overpayment request. If OCERS reduces the amount by \$2,500.00, I would be satisfied and not continue with the appeal. This amount would cover the "overpayment" I made to my attorney. The payment to my attorney was based on OCERS original retro pay amount, which was calculated incorrectly. OCERS should be responsible and hold accountability for the overpayment.

I still need to review everything when I get back home, but it appears the payback amount will be the only outstanding issue. I believe a fair amount of payback would be \$965.74 (3465.74 - 2500.00).

The memorandum erroneously states, "The Applicant has requested that the Board reduce the \$3465.73 overpayment by \$2,500 to account for the attorney fees he paid his attorney for the work performed to secure his Service Connected Disability benefit. Staff denied this request as his payment for services related to his service connected disability are unrelated to the manner of benefit payments..."

I paid my attorney a flat fee for the service provided regarding my application for Service-Connected Disability Retirement benefit. My request to reduce the overpayment has nothing to do with this flat fee. **I also paid my attorney an additional percentage of the retro benefit**

u

**payment received** . The retro benefit check received from OCERS was over \$14,000. This amount was calculated and determined by OCERS. I paid my attorney the additional percentage of the retro benefit payment in February 2021, based on the retro benefit check amount received from OCERS.

OCERS was well aware of my reciprocity with SBCERA, but did not coordinate with SBCERA to factor in any disability offset calculations before issuing the retro benefit payment check. The coordination between OCERS and SBCERA did not occur until I had communication with SBCERA in May of 2021, when informing them of my disability retirement. SBCERA then reach out to OCERS to confirm my disability retirement.

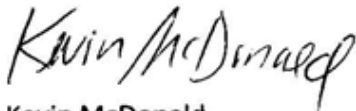
The requested \$2500 reduction of the overpayment is to cover the **additional percentage of the retro benefit payment** I gave to my attorney, based on OCERS incorrect calculation and issued retro benefit check. Had OCERS initially coordinated benefits with SBCERA as required by law, then this wouldn't have happened and I wouldn't be in this predicament.

Since OCERS did not coordinate benefits with SBCERA initially and issued a retro benefit payment check more than what it should have been, it resulted in me paying my attorney more than our contract required. I feel OCERS should be held accountable for their error.

I have worked extensively and in good faith with OCERS to come to a fair resolution, but after numerous delays, have no resolve.

I respectfully request and recommend the Members of the Board of Retirement consider the information provided above and grant the reduction of overpaid benefits in the amount of \$2,500.

Respectively,



Kevin McDonald

RE: [EXTERNAL] Re: SCD Benefit Recalculation

From: Bercaru, Adina (abercaru@ocers.org)

To: kevmaclb@yahoo.com; jlamberson@ocers.org

Date: Monday, January 3, 2022, 05:27 PM EST

Thank you for the clarification!

Adina Bercaru, Member Services Manager P: (714) 569-4896 ✉: [abercaru@ocers.org](mailto:abercaru@ocers.org)

**From:** Kevin McDonald <kevmaclb@yahoo.com>  
**Sent:** Monday, January 3, 2022 2:03 PM  
**To:** Lamberson, Jeff <jlamberson@ocers.org>; Bercaru, Adina <abercaru@ocers.org>  
**Subject:** Re: [EXTERNAL] Re: SCD Benefit Recalculation

I still need to review everything when I get back home, but it appears the payback amount will be the only outstanding issue. I believe a fair amount of payback would be \$965.74 (3465.74 - 2500.00)

On Monday, January 3, 2022, 03:40:18 PM CST, Bercaru, Adina <[abercaru@ocers.org](mailto:abercaru@ocers.org)> wrote:

Hi Mr. McDonald,  
Happy New Year!

Just to make sure I understand correctly, would you please confirm that you agree with everything done on our end as a result of your appeal and the only remaining issue is the payback amount as you believe it should be \$2,500.00 instead of \$3,465.74?

OCERS used 19.0884 years of service in the calculation. The January Zoom meeting will be held via Zoom, however, should there be any changes, we will let you know.

6

Thank you so much,

Adina

Adina Bercaru, Member Services Manager P: (714) 569-4896 ✉: [abercaru@ocers.org](mailto:abercaru@ocers.org)

---

**From:** Kevin McDonald <[kevmaclb@yahoo.com](mailto:kevmaclb@yahoo.com)>  
**Sent:** Monday, January 3, 2022 1:12 PM  
**To:** Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)>; Bercaru, Adina <[abercaru@ocers.org](mailto:abercaru@ocers.org)>  
**Subject:** Re: [EXTERNAL] Re: SCD Benefit Recalculation

Hi Adina,

Happy New Year!

Thank you for the information. I will be able to look over everything better this weekend, as I am not in town. Can you provide the years of serviced used in calculation?

Yes, I do plan to attend the Board Meeting as i don't agree with the amount of overpayment request. If OCERS reduces the amount by \$2,500.00, I would be satisfied and not continue with the appeal. This amount would cover the "overpayment" I made to my attorney. The payment to my attorney was based on OCERS original retro pay amount, which was calculated incorrectly. OCERS should be responsible and hold accountability for the overpayment.

Will the OCERS Board Meeting be held in-person or via zoom?

Respectfully,

Kevin

1

On Thursday, December 30, 2021, 01:30:15 PM CST, Bercaru, Adina <[abercaru@ocers.org](mailto:abercaru@ocers.org)> wrote:

Hello Mr. McDonald,

I apologize for the late response, I was out of the office yesterday.

The breakdown of your recalculated benefit is:

Pension: \$2,006.44

Annuity: \$1,229.88

COLA: \$147.09 (cumulative \$97.09 effective 4/1/2020 and \$147.09 effective 4/1/2021)

SBCERA is paying you an annuity only = \$308.04, as they reported to OCERS. The OCERS recalculated benefit includes 16 hours of holiday compensation we discussed (bringing the total of your appeal to 35.55 hours added to your benefit), we will notify SBCERA of the change in your monthly benefit amount, as this is a coordination of benefits between the 2 reciprocal systems in accordance to County Employees Retirement Law which limits the maximum allowed benefit payable to a member across two systems.

Please let us know if this concludes your concerns in your appeal or if you still plan on attending the January 2022 Board Meeting regarding your OCERS benefit. Our due date for board materials to be include for the January meeting will be early next week.

Regards,

Adina

---

**Adina Bercaru** | Member Services Manager | **Orange County Employees Retirement System (OCERS)**

**Office Address** | 2223 E. Wellington Ave., Ste 100 | Santa Ana, CA 92701 | 714.569.4896 | [abercaru@ocers.org](mailto:abercaru@ocers.org)

**Mailing Address** | PO Box 1229 | Santa Ana, CA 92702



New logo



***"We provide secure retirement and disability benefits with the highest standards of excellence."***

THE INFORMATION CONTAINED IN THIS MESSAGE AND ANY ATTACHMENT MAY BE PRIVILEGED, CONFIDENTIAL, PROPRIETARY OR OTHERWISE PROTECTED FROM DISCLOSURE AND IS INTENDED FOR USE BY THE PERSON(S) NAMED ABOVE. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message and any attachment is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and permanently delete it from your computer and destroy any printout thereof.

Connect with OCERS: 

---

**From:** Kevin McDonald <[kevmac1b@yahoo.com](mailto:kevmac1b@yahoo.com)>  
**Sent:** Tuesday, December 28, 2021 3:03 PM  
**To:** Bercaru, Adina <[abercaru@ocers.org](mailto:abercaru@ocers.org)>  
**Subject:** [EXTERNAL] Re: SCD Benefit Recalculation

Good Evening Adina,

Thank you for the information!

Is it possible to provide a spreadsheet showing the breakdown for the new/recalculated service connected disability benefit amount (base allowance and COLA)? Including the monthly annuity benefit offset I receive from SBCERA?

Thank you Adina!

Best Regards,

Kevin

9

On Tuesday, December 28, 2021, 04:15:26 PM EST, Bercaru, Adina <[abercaru@ocers.org](mailto:abercaru@ocers.org)> wrote:

Hello Mr. McDonald,

Your benefit was recalculated to add 16 hrs of holiday comp for MLK and Memorial 2019 holidays, after we received notification from OC Auditor Controller that your timesheets containing these holidays have been adjusted.

Therefore, your final average salary and benefit amount change as reflected in the attached letter. Please disregard the letter dated December 2, 2021.

I removed the personal identifiable information (address and last 4 of SSN), but I mailed the original, certified mail, no signature required (since you will be out of town). Also, you asked for a breakdown of how we calculated your overpayment amount. Please see below the amounts already paid vs what we should have paid.

Please review and let me know if you have any questions.

16



Thank you,

---

**Adina Bercaru** | Member Services Manager | **Orange County Employees Retirement System (OCERS)**

**Office Address** | 2223 E. Wellington Ave., Ste 100 | Santa Ana, CA 92701 | 714.569.4896 | [abercaru@ocers.org](mailto:abercaru@ocers.org)

**Mailing Address** | PO Box 1229 | Santa Ana, CA 92702

New logo



***"We provide secure retirement and disability benefits with the highest standards of excellence."***

THE INFORMATION CONTAINED IN THIS MESSAGE AND ANY ATTACHMENT MAY BE PRIVILEGED, CONFIDENTIAL, PROPRIETARY OR OTHERWISE PROTECTED FROM DISCLOSURE AND IS INTENDED FOR USE BY THE PERSON(S) NAMED ABOVE. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message and any attachment is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and permanently delete it from your computer and destroy any printout thereof.

Connect with OCERS: 

11

Re: [EXTERNAL] Fw: McDonald Calculation

From: Kevin McDonald (kevmac1b@yahoo.com)  
To: jimberson@ocers.org  
Cc: sjenike@ocers.org  
Date: Monday, December 13, 2021, 09:47 PM EST

Good Evening Mr. Lamberson,

Please see the attached document, *County of Orange- Timesheet Correction Form 2019*, which reflects adjustments/corrections made by the auditor-controller to my timesheets for January 21, 2019 and May 27, 2019. It reflects that 8 hours of HC was posted for both days.

Also, I received the Benefit Recalculation with Offset letter dated, December 2, 2021. The Benefit Recalculation with Offset letter is contradictory as the payback amount listed is \$2117.50, but the options given totals \$3791. I assume this is erroneous.

If the amount to collect is \$2117.50, then I would assume this is the amount OCERS is seeking to collect starting in June 2021. If OCERS is seeking to collect \$3791, I remind you, as indicated in the email I sent to you on October 8, 2021, "*OCERS is aware that I had legal representation from an attorney regarding my disability retirement application. OCERS is also aware that the retro payment for my disability benefit was sent to my attorney on my behalf. My attorney received a percentage of this retro pay, which OCERS is now declaring as an overpayment. I paid my attorney based on the original retro disability benefit amount received.*"

If OCERS intends to interpret the laws differently than SBCERA and move forward with being punitive by withholding monies I already paid to my attorney, then I see my only option is to seek legal advice and submit a Request For an Administrative Review.

As I wrote before, "*...If OCERS collected retro overpayment starting June 2021, it would be consistent with SBCERA and would seem fair and more reasonable. Additionally, it would resolve the situation regarding the payment I made to my attorney, which was based on OCERS original retro payment amount, not the new proposed offsetting calculation.*"

OCERS has not directly addressed my concerns of the amount of stated overpayment. I have communicated with OCERS with the intend to have this resolved in a fair and equitable manner. I request OCERS to do the same, in good faith, by doing the following:

- 1) Include the 16 hours of holiday comp for January 21, 2019, and May 27, 2019, in the amount of \$611.52, in my Final average salary
- 2) Recalculate my benefit, combined allowance, and disability offset
- 3) Recalculate benefit overpayment and collect from June 2021, forward only
- 4) Provide detailed documentation that shows the breakdown of the recalculations

Best Regards,

Kevin McDonald

On Tuesday, November 9, 2021, 02:48:58 PM EST, Lamberson, Jeff <jimberson@ocers.org> wrote:

Good Morning Mr. McDonald

I have reviewed your request below. I have not received any information regarding your request to the County regarding the time card issues you had for the two remaining 8 hour days. As such OCERS will not make any additional changes to your final average salary for those days.

I believe that we have made all of the changes to your account that we can make at this time so we will schedule your appeal to come back to the Board on January 18, 2022. If you receive any additional information that is pertinent to your request for the additional 16 hours, we will be happy to review it before that date.

In addition, we will recalculate your benefit to apply the disability offset and will inform you in writing once that has occurred. You will have 90 days from the date of that notification to request administrative view of the determination.

Please let me know if you have any questions.

**JEFF LAMBERSON** | Director, Member Services IP: (714) 558-6203 | C: (714) 559-9836 | [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

**From:** Kevin McDonald <kevmacib@yahoo.com>  
**Sent:** Friday, October 8, 2021 10:00 AM  
**To:** Lamberson, Jeff <jlamberson@ocers.org>  
**Cc:** Jenike, Suzanne <sjenike@ocers.org>  
**Subject:** Re: [EXTERNAL] Fw: McDonald Calculation  
**Importance:** High

**Good Morning Mr. Lamberson,**

**Thank you for the additional information. I have provided responses below your comments.**

I have reviewed the highlighted calculations below and do not see any errors in the calculations. I have copied the highlighted items from my original 8-18-21 email below.

- This would produce a benefit of \$3,421.34 at 2% for every year of service (.02\*25.3745\*\$6,741.69) **This is correct.**
- (\$3,678.89 - \$3,421.34 = \$257.54) -> **\$257.57 should have been \$257.54 \* 75.23% = \$193.74 This is correct as well although there was a typo highlighted in red.**

Regarding your comment at the end of your first paragraph, "At the very least, I would need a better explanation and details of the process to understand how the figures were determined.", I am not sure what additional explanation can be made. I have provided you each of the calculations regarding the determination of your benefit in the August 18, 2021 email below. I can however provide additional information on the overpayments at the beginning of next week as I do not have access to the file today.

**Thank you for making the corrections. I have responded based on my understanding of the information you have provided.**

You are correct in your comment that we had discussed that if we determined we were not going to allow for the January 21, 2019 holiday of 8 hours to be included, that you would have the opportunity to review that with the county. I have not told you in my email from August 18, 2021 that you should not do that. I however, also did not tell you that you should go do that either. I cannot tell you what the County will allow or adjust. We must go off the records they have provided. The timecard we have on file from them indicates the hours were paid to you in the same pay period as the holiday. At this point, we have approved the additional 19.55 hours from your appeal where you requested 35.55 hours. To note, in previous discussions with the County, when they were researching your timecards, they stated in order to correct the timecards with the County from Holiday Pay (HH) to Holiday Comp (HC), you would end up owing the County for 4 hours at your hourly rate because Holiday Comp (HC) is credited at 8 hours and the entry in your timecards for Holiday Pay (HH) time was for 10 hours for each of those days. Below are notes sent from the County regarding their review of these specific timecards.

1/21/2019 Correcting 10 hours of HH to 8 hours of HC

Posting 8 hours of HC would give him 8 hours of comp time. Since his timecard was not at 80 hours, we would post the 8 hours earned leading to him owing back the County 2 hours of HH overpayment. This would decrease his service years by 2 hours.

5/27/2019 Correcting 10 hours of HH to 8 hours of HC

This would require posting leave balances of 10 AL hours on 5/24. He would owe back 10 hours of annual leave from his separation pay out and we would owe him 8 hours of comp pay. So, in total he would owe back 2 hours to the County if we corrected his timecard from HH to HC.

In response to your request to not have your service time reduced by .125 years of service, your argument throughout this process was that you would not have been using your banked time off during your workers comp leave if the County had paid you the TTD time more timely to you. You stated you would have only had to use 20% to make up the difference from the TTD 80% payments. This would mean that the 80% would have still have been in your banks and not used to pay you. These payments that were paid to you, added .125 to your years of service. In order to calculate your benefit correctly and include the time in your banks for the holiday comp and vacation appeal, you had the County provide what they would have done if they had paid the TDD more timely to you, we must reduce the years of service by .125 years.

**Not that is makes much difference now, but to clarify, in our phone conversation in June 2021, you ask me to wait until you had a chance to look further into the 16 hours of Holiday Comp. I agreed and asked if there was an issue in doing so, to let me know.**

**Yes, I could have looked into it further on my own, but out of respect of your request, I was allowing you to follow up on your end. Since I didn't hear back from you, I assumed it was determined to include the 16 hours in my final average salary.**

**I cc'd you on an email I sent today to Ms. Beverly Umholtz, Workers Compensation Program Manager, regarding the Holiday Comp (HC) hours for January 21, 2019 and May 27, 2019.**

13

If additional 16 hours of Holiday Comp are included in my final average salary, then I understand the reasoning for reducing my service years by .125 years. It doesn't seem fair to reduce my service years by .125 years without including all of the 35.55 hours. The last 16 HC hours in question are due to my Worker's Comp time off, which the .125 years of service covers. It should be all or nothing; it shouldn't be just including some of the hours (19.55) and reducing all of the years of service (.125). If the years of service are to be reduced by .125 then all of the 35.55 hours should be included.

In response to SBCERA not charging for the previous overpayments to you, every system operates under their own procedures. Overpayments of benefits in our system are not allowed to be written off as they are assets of the plan to pay benefits for the members of the plan.

Regarding the breakdown of the overpayment and the comment about a payment to your attorney, OCERS has never made a payment to your attorney. All overpayments were made directly to you as part of your monthly benefit due to your disability offset required from the reciprocal benefit provided by SBCERA. I will send you the details of this calculation at the beginning of next week.

I can attest to and definitely agree that systems operate differently. I also know that understanding and interpretation of the laws pertaining to County Employees Retirement can be ambiguous.

With that said, it is also a bit complex with the payment issue to my attorney.

OCERS is aware that I had legal representation from an attorney regarding my disability retirement application. OCERS is also aware that the retro payment for my disability benefit was sent to my attorney on my behalf. My attorney received a percentage of this retro pay, which OCERS is now declaring as an overpayment. I paid my attorney based on the original retro disability benefit amount received.

OCERS coordinated reciprocity with SBCERA. Knowing that I had reciprocity, OCERS still calculated my disability retro pay incorrectly, without the offset, and only became aware of it when SBCERA contacted OCERS in May of 2021. For the record, I was the one to initially notify SBCERA of my disability retirement.

SBCERA expeditiously recalculated my benefit and only pursued additional benefit paid from June 2021 forward. As I stated before, they determine it would be punitive to collect previously paid benefits, prior to notification that my disability retirement was granted. This seemed fair to me.

I would request that OCERS follow suit and reconsider the calculated amount of retro benefit overpayment. If OCERS collected retro overpayment starting June 2021, it would be consistent with SBCERA and would seem fair and more reasonable. Additionally, it would resolve the situation regarding the payment I made to my attorney, which was based on OCERS original retro payment amount, not the new proposed offsetting calculation.

In summary, I propose the following to resolve my current appeal which is pending before the OCERS Board:

- 1) Include the 16 hours of holiday comp for January 21, 2019, and May 27, 2019, in the amount of \$611.52, in my Final average salary
- 2) Recalculate my benefit, combined allowance, and disability offset
- 3) Recalculate benefit overpayment and collect from June 2021, forward only

If OCERS it's not in agreement with the proposed items listed above, then perhaps it's time to bring the matter before the Board for a final resolution. As mentioned before, this has extended way beyond what I could have imagined and is resulting in additional stress and anxiety for me. Let's this resolved in a fair and equitable manner. Thank you for your understanding.

Best Regards,

Kevin McDonald  
(562) 243-4192

On Monday, September 20, 2021, 08:55:38 PM EDT, Lamberson, Jeff <jlamberson@ocers.org> wrote:

Good Evening Mr. McDonald

As requested, here are the details regarding your overpayment calculation. These numbers were good through the 9/1/2021 payroll as stated in my August email. They will have changed after that point with the additional overpayments that have been paid since then.

| DATES            | MONTHS | OLD ANNUITY | OLD PENSION | COLA% | OLD COLA | CUMM. COLA | OLD ALLOWANCE | NEW ANNUITY | NEW PENSION | COLA% | NEW COLA | CUMM. COLA | NEW ALLOWANCE |
|------------------|--------|-------------|-------------|-------|----------|------------|---------------|-------------|-------------|-------|----------|------------|---------------|
| 7/6/19 - 7/31/19 | 0.84   | 1031.51     | 1786.99     | 0.00% | 0.00     | 0.00       | 2818.50       | 1031.51     | 1675.51     | 0.00% | 0.00     | 0.00       | 2707.02       |
| 8/1/19 - 3/31/20 | 8.00   | 9839.04     | 17045.12    | 0.00% | 0.00     | 0.00       | 26884.16      | 9839.04     | 15981.76    | 0.00% | 0.00     | 0.00       | 25820.80      |

14

|                  |       |                 |                 |       |               |                |                 |                 |                 |       |               |                |                 |
|------------------|-------|-----------------|-----------------|-------|---------------|----------------|-----------------|-----------------|-----------------|-------|---------------|----------------|-----------------|
| 4/1/20 - 3/31/21 | 12.00 | 14758.56        | 25567.68        | 3.00% | 100.82        | 1209.79        | 41536.03        | 14758.56        | 23972.64        | 3.00% | 96.83         | 1161.94        | 39893.14        |
| 4/1/21 - 8/31/21 | 4.00  | 4919.52         | 8522.56         | 1.50% | 51.92         | 610.94         | 14053.02        | 4919.52         | 7990.88         | 1.50% | 49.87         | 586.78         | 13497.18        |
|                  |       | <b>30548.63</b> | <b>52922.35</b> |       | <b>152.74</b> | <b>1820.73</b> | <b>85291.71</b> | <b>30548.63</b> | <b>49620.79</b> |       | <b>146.69</b> | <b>1748.71</b> | <b>81918.13</b> |
| Current month:   |       |                 |                 |       |               |                |                 | <b>1229.88</b>  | <b>1997.72</b>  |       |               | <b>146.69</b>  | <b>3374.29</b>  |
| Retro:           |       |                 |                 |       |               |                |                 | <b>0.00</b>     | <b>-3301.56</b> |       |               | <b>-72.02</b>  | <b>-3373.58</b> |

Best Regards

**JEFF LAMBERSON** | Director, Member Services | P: (714) 558-6203 | C: (714) 559-9836 | [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

**From:** Lamberson, Jeff  
**Sent:** Friday, September 17, 2021 3:51 PM  
**To:** 'Kevin McDonald' <[kevmacdh@yahoo.com](mailto:kevmacdh@yahoo.com)>  
**Cc:** Jenike, Suzanne <[sjenike@ocers.org](mailto:sjenike@ocers.org)>  
**Subject:** RE: [EXTERNAL] Fw: McDonald Calculation

Good Afternoon Mr. McDonald

I have reviewed the highlighted calculations below and do not see any errors in the calculations. I have copied the highlighted items from my original 8-18-21 email below.

This would produce a benefit of \$3,421.34 at 2% for every year of service (.02\*25.3745\*\$6,741.69) **This is correct.**

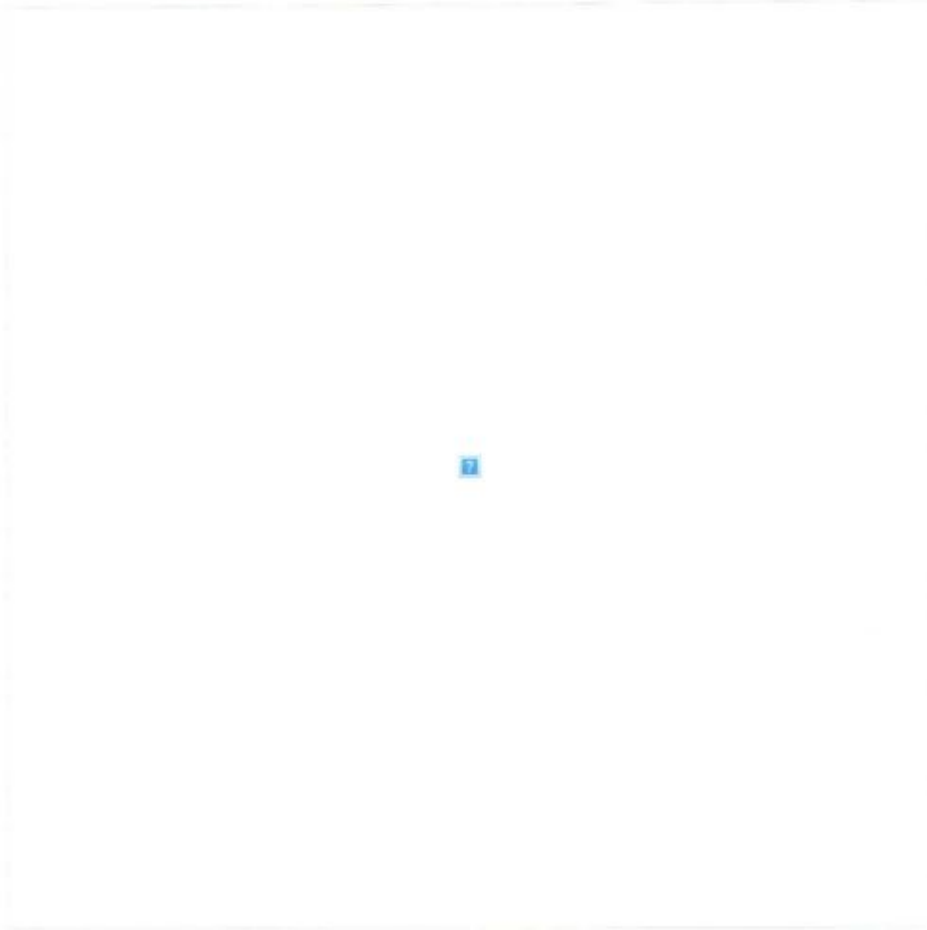
(\$3,678.89 - \$3,421.34 = \$257.54) -> \$257.57 **should have been \$257.54 \* 75.23% = \$193.74 This is correct as well although there was a typo highlighted in red.**

Regarding your comment at the end of your first paragraph, "At the very least, I would need a better explanation and details of the process to understand how the figures were determined.", I am not sure what additional explanation can be made. I have provided you each of the calculations regarding the determination of your benefit in the August 18, 2021 email below. I can however provide additional information on the overpayments at the beginning of next week as I do not have access to the file today.

You are correct in your comment that we had discussed that if we determined we were not going to allow for the January 21, 2019 holiday of 8 hours to be included, that you would have the opportunity to review that with the county. I have not told you in my email from August 18, 2021 that you should not do that. I however, also did not tell you that you should go do that either. I cannot tell you what the County will allow or adjust. We must go off the records they have provided. The timecard we have on file from them indicates the hours were paid to you in the same pay period as the holiday. At this point, we have approved the additional 19.55 hours from your appeal where you requested 35.55 hours. To note, in previous discussions with the County, when they were researching your timecards, they stated in order to correct the timecards with the County from Holiday Pay (HH) to Holiday Comp (HC), you would end up owing the County for 4 hours at your hourly rate because Holiday Comp (HC) is credited at 8 hours and the entry in your timecards for Holiday Pay (HH) time was for 10 hours for each of those days. Below are notes sent from the County regarding their review of these specific timecards.

1/21/2019 Correcting 10 hours of HH to 8 hours of HC

Posting 8 hours of HC would give him 8 hours of comp time. Since his timecard was not at 80 hours, we would post the 8 hours earned leading to him owing back the County 2 hours of HH overpayment. This would decrease his service years by 2 hours.



5/27/2019 Correcting 10 hours of HH to 8 hours of HC

This would require posting leave balances of 10 AL hours on 5/24. He would owe back 10 hours of annual leave from his separation pay out and we would owe him 8 hours of comp pay. So, in total he would owe back 2 hours to the County if we corrected his timecard from HH to HC.





In response to your request to not have your service time reduced by .125 years of service, your argument throughout this process was that you would not have been using your banked time off during your workers comp leave if the County had paid you the TTD time more timely to you. You stated you would have only had to use 20% to make up the difference from the TTD 80% payments. This would mean that the 80% would have still have been in your banks and not used to pay you. These payments that were paid to you, added .125 to your years of service. In order to calculate your benefit correctly and include the time in your banks for the holiday comp and vacation appeal, you had the County provide what they would have done if they had paid the TDD more timely to you, we must reduce the years of service by .125 years.

In response to SBCERA not charging for the previous overpayments to you, every system operates under their own procedures. Overpayments of benefits in our system are not allowed to be written off as they are assets of the plan to pay benefits for the members of the plan.

Regarding the breakdown of the overpayment and the comment about a payment to your attorney, OCERS has never made a payment to your attorney. All overpayments were made directly to you as part of your monthly benefit due to your disability offset required from the reciprocal benefit provided by SBCERA. I will send you the details of this calculation at the beginning of next week.

Please let me know if you have any additional questions or if I did not address the errors you spoke of in the calculation correctly. I will send the overpayment details on Monday.

Best Regards

---

**JEFF LAMBERSON** | Director, Member Services | P: (714) 558-6203 | C: (714) 559-9836 | [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

---

**From:** Kevin McDonald <[kevmaclb@yahoo.com](mailto:kevmaclb@yahoo.com)>  
**Sent:** Wednesday, August 25, 2021 6:30 PM  
**To:** Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)>  
**Cc:** Jenike, Suzanne <[sjenike@ocers.org](mailto:sjenike@ocers.org)>  
**Subject:** Re: [EXTERNAL] Fw: McDonald Calculation

17

Importance: High

Good Evening Jeff,

I hope all is well with you.

The additional information provided is confusing and difficult to understand. I do understand how some of the figures were determined, but after seeing that some of the figures/calculations you provided appear incorrect (I highlighted some of them in your email), I decided I would reach out to give OCERS an opportunity to make corrections and provide additional information before going much further. At the very least, I would need a better explanation and details of the process to understand how the figures were determined.

I did have the impression, after we spoke on the phone in June, if there was an issue with the "County representative" agreeing to inclusion of the last 16 hours in my FAS, I would be informed so I could follow up with the County directly. I was not provided with this opportunity. You asked that I wait until you had a chance to look into it further. The 8 hours for January 21, 2019, in the amount of \$305.76, should be include in my final average salary as the incorrect coding for these hours was done by entities unknown to me.

I don't agree with nor do I think it's fair for OCERS to reduce of my service credits, especially since OCERS is not including all of the 35.55 hours in my final average salary calculation. I would request that OCERS maintain the 0.125 service credit in my total years of service.

The overpayment you referenced, has no breakdown. I definitely would like to see how it was determined as it does involve a payment made to my previous attorney. The overpayment that OCERS calculated appears to be from an internal OCERS error/oversight as OCERS coordinated my reciprocity with SBCERA.

Additionally, OCERS isn't consistent with how SBCERA handled an overpayment within their system. SBCERA decided to forgo any overpayment prior to the notification of my disability retirement from OCERS, as it seems punitive especially for a retiree with a disability retirement.

I did consult with my previous attorney for some guidance. She did get paid a percentage of the retro the payment I received and this has been a rather complex and lengthy process. As you know, I requested a review of the determination of my retirement benefit back in November 2019 and didn't receive the CEO determination until November 2020. My request for an Administrator Review of the CEO determination was submitted in January 2021. The OCERS Board meeting was in April 2021, and the recalculated benefit is still not finalized. I never imaged that this would still not be finalized. It is very stressful and causes me undue anxiety.

In an effort to have this matter expedited and resolved and to prevent needing to go before the OCERS Board at the next meeting, and I respectfully request that OCERS:

- 1) Include the 8 hours for January 21, 2019, in the amount of \$305.76 in my FAS
- 2) Maintain my service credit at 19.2134 years of service
- 3) Forgo any retro overpayment
- 4) Recalculate my benefit, combined allowance, and disability offset

In duty of good faith, I ask OCERS to consider what is requested. I am available to discuss this matter at any time, but please provide a response within 2 weeks of receiving this email.

Respectfully,

Kevin McDonald

(562) 243-4192

On Wednesday, August 18, 2021, 08:02:00 PM EDT, Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)> wrote:

Mr. McDonald.

Sorry for the delay in responding. I believe you are requesting details on item 3 and the last statement regarding the disability offset. If you have questions or need clarification on items 1 and 2 please let me know.

18

The following are the details on how the disability offset and resulting overpayment were calculated.

- Your current combined allowance including the approved 19.55 hours of adjustments would become \$3,678.89 in monthly benefit (this includes SBCERA benefits of \$308.04 per month + OCERS benefit of \$3,370.85).
- In order to calculate a disability offset, we must first consider how much your benefit would have been if all of your service hours were under the OCERS plan. Your combined service credits are 25.3745 years across both systems. This would produce a benefit of \$3,421.34 at 2% for every year of service (.02\*25.3745\*\$6,741.69)
- Based on service credits from each system, the disability offset percentage is 75.23%. (19.0884 service from OCERS / 25.3745 Total Service across both systems)
- We must then determine the pro-rata share of the difference between the combined benefit and the OCERS benefit with all Service Credits in order to determine the disability offset that must be used to reduce your OCERS benefit.. (\$3,678.89 - \$3,421.34 = \$257.54) -> \$257.57 \* 75.23% = \$193.74
- This amount is then used to reduce the benefit would have been if all of your service hours were under the OCERS plan (\$3,421.34 - \$193.74 = **\$3,227.60**)
- When we recalculate your benefit using the additional hours (19.55) and service adjustment (.0125) and apply the disability offset as calculated above retroactive to your effective date of 7/6/2019, there is an overpayment due of **\$3,373.58 as of 8/31/2021**.

This is calculated by taking your current monthly base benefit less the new monthly base benefit (\$3,360.52 - \$3,227.60 = 132.92) plus reductions in COLA corresponding to these benefit reductions retroactively to your effective date.

Please let me know if you have any additional questions. If you are comfortable with these numbers, we can move forward with processing the recalculated benefits in the system and prepare a repayment plan for the overpayment. Each additional payment at the current benefit amount will increase the overpayment due at the time of the recalculation. Once everything is finalized you will receive the standard confirmation letters. If you still feel you need to appeal our determinations, we would bring this back to the board with your current appeal in the October Board meeting (there are no September board meetings for OCERS).

Thank you for your time.

Best Regards,

---

**JEFF LAMBERSON** | Director, Member Services | P: (714) 558-6203 | C: (714) 559-9836 | [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

---

**From:** Kevin McDonald <[keymac1b@yahoo.com](mailto:keymac1b@yahoo.com)>  
**Sent:** Thursday, July 29, 2021 3:17 PM  
**To:** Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)>  
**Cc:** Jenike, Suzanne <[sjenike@ocers.org](mailto:sjenike@ocers.org)>  
**Subject:** Re: [EXTERNAL] Fw: McDonald Calculation

Good afternoon Jeff,

Thank you for the information.

I don't understand how the determinations were made. Can you please provide detail information how OCERS came to the calculations/figures you outlined?

Thank you,

Kevin

On Monday, July 26, 2021, 09:39:54 PM EDT, Lamberson, Jeff <jlamberson@ocers.org> wrote:

Good Evening Mr. McDonald

I am about to leave the office and realized I have not sent you a response on your appeal. I am going to provide the details here in this email in regards to your appeal as well as the disability offset information for you to review. We have not provided any of this information to the board but will be ready for the next board meeting to discuss the following.

You requested a total of 35.55 hours to be added to your retirement FAS calculation for an additional .55 vacation hours and for various holiday pay dates and this is what we have been able to accommodate after analyzing the responses from the County.

- 1. Vacation and various holiday pay hours in your appeal:
  - 0.55 hrs vac = 0.55 x \$38.22 = \$21.02 - **Approved**
  - 1 hr hol comp 10/8/2018 (Columbus Day) = \$37.84 - **Approved**
  - 8 hrs hol comp (Veteran's Day) 11/12/2018 = 8 x \$37.84 = \$302.72 - **Approved**
  - 8 hrs hol comp (Washington's Day) 2/18/2019 = 8 x \$38.22 = \$305.76 - **Approved**
  - 2 hrs Spring Break (March 2019) = 2 x \$38.22 = \$76.44 - **Approved**

We were unable to approve two 8 Hour Holiday dates that were paid out to you directly or were not coded correctly that we previously spoke about.

THIS PROVIDES A TOTAL ADDED: 19.55 HRS = \$743.78

OLD FAS:       \$6,721.03  
 NEW FAS:       **\$6,741.69**

- 2. According to County's spreadsheet, we need to reduce service credits by 80% of 325 hrs = 260 hrs = 0.125 yrs of service. Adjusted service: 19.2134 – 0.125 = 19.0884
- 3. In addition, your previously paid OCERS benefit does not take into account the required disability offset due to your benefit you receive from SBCERA = \$308.04

After making the above adjustments, your final benefit including the offset, is: \$3,227.60. With the application of the disability offset, there is now an overpayment of your previously paid benefits in the amount of \$3,373.58 if we perform the recalculations effective with the 9/1 payroll.

**JEFF LAMBERSON** | Director, Member Services | P: (714) 558-8203 | C: (714) 559-9836 | [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

**From:** Kevin McDonald <kevmacib@yahoo.com>  
**Sent:** Tuesday, July 13, 2021 9:20 PM  
**To:** Lamberson, Jeff <jlamberson@ocers.org>  
**Cc:** Jenike, Suzanne <sjenike@ocers.org>  
**Subject:** Re: [EXTERNAL] Fw: McDonald Calculation

26

Good Evening Jeff,

I hope this finds you well.

Since I haven't received an update, I assume that OCERS is still working through the calculations.

Knowing that the OCERS Board meeting is less than a week away, I would again request to keep my appeal on the OCERS Board Meeting Agenda for July 19, 2021, as the appeal isn't resolved and OCERS need additional time to complete the calculations.

The delay is concerning to say the least, but it also is hard to plan for the future without knowing what the final adjustments will be. Is there anything I can do to assist with this process? How much longer do you anticipate it will take before OCERS has completed the calculations?

Regards,

Kevin

On Tuesday, July 6, 2021, 04:19:44 PM PDT, Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)> wrote:

Good Afternoon Mr. McDonald

We are still working through the calculations. I will follow up on Thursday with an update. I am sorry we did not get this completed by month end. I believe at our last discussion I provided an update that we are good with 19.5 hours of the 35.5 hours. The two we had problems with were an eight hour entry for January 2019 because your pay data indicated you were paid for 10 hours of Holiday Time coded as HH in the records and an eight hour entry for May 27, 2019 because you were paid a full 80 hours during that pay period and did not have a Holiday Comp time recorded. I believe you agreed with the May 27<sup>th</sup> date and that it was possible you had elected to have that paid out to you but you had a question on the January timecard as you stated you were on leave and someone else was entering your time. We are working to double check that with the county representative to see what they say.

I hope you had a nice 4<sup>th</sup> of July. I will follow up on Thursday with a status.

---

**JEFF LAMBERSON** | Director, Member Services | P: (714) 558-6203 | C: (714) 559-9836 | E: [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

---

**From:** Kevin McDonald <[kevmac1b@yahoo.com](mailto:kevmac1b@yahoo.com)>  
**Sent:** Thursday, July 1, 2021 5:51 PM  
**To:** Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)>  
**Cc:** Jenike, Suzanne <[sjenike@ocers.org](mailto:sjenike@ocers.org)>  
**Subject:** Re: [EXTERNAL] Fw: McDonald Calculation

Good Evening Jeff,

I hope all is well with you.

21

When we spoke on the phone a few weeks ago, you stated the FAS adjustments should be completed by the end of the month. Can you give me an update on the status of the inclusion of the 35.5 hours in my FAS?

Thank you,

Kevin

On Tuesday, June 15, 2021, 01:51:44 PM EDT, Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)> wrote:

Good Morning Mr. McDonald

Sorry for the delay in responding. I should be able to provide you and update later today. Thank you for your patience as we work through your request.

---

**JEFF LAMBERSON** | Director, Member Services | P: (714) 558-6203 | C: (714) 559-9836 | [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

---

**From:** Kevin McDonald <[kevmacib@yahoo.com](mailto:kevmacib@yahoo.com)>  
**Sent:** Sunday, June 13, 2021 8:16 PM  
**To:** Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)>  
**Cc:** Jenike, Suzanne <[sjenike@ocers.org](mailto:sjenike@ocers.org)>  
**Subject:** Re: [EXTERNAL] Fw: McDonald Calculation

Good Evening Mr. Lamberson,

I hope all is well with you.

I haven't received a response from you since the email I sent to you on May 24, 2021. I was hopeful I would have heard back from you in a timely matter as the Board meeting is next Monday.

I am requesting to keep my appeal on the OCERS Board Meeting Agenda for June 21, 2021, as the appeal isn't resolved and OCERS need additional time in order to complete calculations. It seems more prudent to keep it on the agenda as opposed to having to request a review by the Board at a later date. The Board can be updated since the meeting on April 19, 2021.

In the meantime, I would still like to set up a phone conference to follow up with you or one of your representative.

Also, based on the information in your last email, I would like to follow up with the County if needed.

Please advise.

Regards,

Kevin

22

On Monday, May 24, 2021, 09:59:15 PM EDT, Kevin McDonald <[kevymacib@yahoo.com](mailto:kevymacib@yahoo.com)> wrote:

Good Evening Mr. Lamberson,

Thank you for the information. There is a lot of new information you provided, different from the initial appeal.

I am not sure what representatives from the County that you discussed the contents of the letter with, but I want to follow up with the information you provided.

My understanding is that the 325.40 hours were the 80% of my hours used, it wasn't my total hours. I was on leave for approximately 15 weeks, which is more than 325 hours. Several of the pay periods in the excel document provided by the county shows that I would have had 64 hours restored for the pay period which is 80% (80 hours x 80%= 64 hours).

If getting this clarified with the County will make a difference while OCERS is evaluating my benefit to determine if I'm eligible for additional final average salary credits, I can follow up with the County.

Is it possible to set up a time to discuss the information you outlined in your email? I would like to get some clarification and to better understand what I might expect in regards to my benefit.

Regards,

Kevin

On Friday, May 21, 2021, 07:38:55 PM EDT, Lamberson, Jeff <[lamberson@ocers.org](mailto:lamberson@ocers.org)> wrote:

Good afternoon Mr. McDonald

I wanted to provide you an update regarding your account appeal. Ms. Jenike and I had a discussion with representatives from the County of Orange today regarding the letter they provided to you dated May 5, 2021. The County team explained that the \$13,107 lump sum payment they awarded to you would have been different if you were an active member at the time it was issued. If active they would have reinstated 80% of your leave hours and the workers compensation payment would have been adjusted by the salary associated to those hours. Given that you were not active at the time of the workers compensation award determination, they paid you the entire amount in lieu of the offset/credit back of your leave balances.

For example: 80% of 325 hours used = 260 hours. 260 X (times) your hourly pay rate of \$38.22 = \$9937. The County confirmed that if you were active you would have been credited the 260 leave hours and the \$13,107 lump sum payment would have been offset and reduced to \$3169 (\$13107 - \$9937 = \$3169). Since you were not active they awarded you the entire payment but did not offset the payment or credit back your leave hours.

We are evaluating your benefit to determine if you are eligible for additional final average salary credit given the assumption that the 260 hours would have been credited back to you.

Since these 260 hours were originally paid to you and reported to OCERS as wages, you received service credits for the time; approximately 0.1250 years of service credit that may need to be removed from your account. At retirement you had accrued 19.2134 years of service credit. Once adjusted for the removal of the 260 hours your total years of service credit will be approximately 19.0884.

Once these calculations are completed, we will inform your reciprocal system (SBCERA) so they may update the FAS they used for their benefit calculations. Because you are receiving a benefit from two California public pension systems, and one is a disability allowance, your account needs to be evaluated to determine if the disability offset is necessary. Please see the October 18, 2019 letter which indicates that the disability offset may apply.

The laws governing benefit payments between reciprocal systems require coordination, including adjustments due to disability retirement. This is to ensure that members are not receiving a total benefit as a result of a disability retirement greater than they would receive if all of their service was earned in a single system. For your convenience I have attached a copy of government code section 31838.5.

23

In order to accomplish these calculations, we will be removing your appeal from the June 21, 2021 OCERS board meeting agenda and we will send you the figures once all of the above stated calculations are completed. In the event you disagree with our determination you will be given an opportunity to request review by the Board.

Best Regards

---

**JEFF LAMBERSON** | Director, Member Services | P: (714) 558-6203 | C: (714) 559-9836 | [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

**From:** Lamberson, Jeff  
**Sent:** Friday, May 14, 2021 2:05 PM  
**To:** 'Kevin McDonald' <[kevmac1b@yahoo.com](mailto:kevmac1b@yahoo.com)>  
**Cc:** Jenike, Suzanne <[sjenike@ocers.org](mailto:sjenike@ocers.org)>  
**Subject:** RE: [EXTERNAL] Fw: McDonald Calculation

Good afternoon Mr. McDonald

Thank you for the additional information. I am just returning from a short vacation and will review and follow up with you by Wednesday next week.

Please let me know if you have any questions.

---

**JEFF LAMBERSON** | Director, Member Services | P: (714) 558-6203 | C: (714) 559-9836 | [jlamberson@ocers.org](mailto:jlamberson@ocers.org)

**From:** Kevin McDonald <[kevmac1b@yahoo.com](mailto:kevmac1b@yahoo.com)>  
**Sent:** Wednesday, May 5, 2021 9:09 PM  
**To:** Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)>  
**Cc:** Jenike, Suzanne <[sjenike@ocers.org](mailto:sjenike@ocers.org)>  
**Subject:** Fw: [EXTERNAL] Fw: McDonald Calculation

I did not attach the 2 documents as referenced. My apologies.

Here they are:

----- Forwarded Message -----

**From:** Kevin McDonald <[kevmac1b@yahoo.com](mailto:kevmac1b@yahoo.com)>  
**To:** Jeff Lamberson <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)>  
**Cc:** Suzanne Jenike <[sjenike@ocers.org](mailto:sjenike@ocers.org)>  
**Sent:** Thursday, May 6, 2021, 12:03:04 AM EDT  
**Subject:** Fw: [EXTERNAL] Fw: McDonald Calculation

Good Evening Mr. Lamberson,

I hope all is well with you.

Since I did not hear back from you after I sent the email below, I did request additional information from Risk Management in an effort to provide additional information to further assist OCERS with the Administrative Review request.

Please see the attached letter from Ms. Umholtz, providing additional information and the document from the Auditor Controller's Office.

74



I respectfully request an update from OCERS regarding my request of Administrative Review.

Regards,

Kevin

----- Forwarded Message -----

**From:** Kevin McDonald <[kevmac1@yahoo.com](mailto:kevmac1@yahoo.com)>  
**To:** Lamberson, Jeff <[jlamberson@ocers.org](mailto:jlamberson@ocers.org)>  
**Sent:** Thursday, April 22, 2021, 01:50:08 PM EDT  
**Subject:** Re: [EXTERNAL] Fw: McDonald Calculation

Mr. Lamberson,

With all due respect, you added the documentation from the County regarding my time used during my Worker's Compensation (WC) Leave of Absence (LOA) must include that my time "should not have been used during your leave of absence."

Obviously, my time was used during my WC LOA as it was my only way to receive payment while I was on my Worker's Compensation leave as the claim was pending. I don't think it's reasonable to expect that the County would provide documentation stating that I should not have used my leave during my absence. Even if the Worker's Compensation claim has been accepted from the start of my WC LOA, I would have used 20% of my leave balances during this time off. I am not sure why OCERS would request such verbiage from the County.

Also, as you know, since I am not an active employee, the County cannot restore my 325.40 compensation earnable hours. The excel document provided by Ms. Umholtz shows all of the hours that would have been restored if I was still an active employee.

Per OCERS Administrative Procedure (OAP), these hours of pay are compensation earnable as they are types of cash out items included in compensation earnable for Legacy members. These hours would have been permitted to be cashed out during the measuring period of July 6, 2018 through July 5, 2019. But as you know, they were not paid out until March of 2020.

If you take another look at the documentation provided in my Request for Administrative Review of CEO Determination, 19 hours of holiday comp were recorded on my timecards for the dates of October 8, 2018, November 12, 2018, February 18, 2019, and March 1, 2019. I would most certainly think, with this documentation and the documentation provided by the County thus far, it would be sufficient supporting evidence for OCERS to complete a recalculation of my retirement allowance to at least include these 19 hours in my Final Average Salary (FAS).

Would a statement from the County be evidence enough to support a recalculation of my retirement allowance? A statement such as:

This memo is to verify that Kevin McDonald was entitled to have 325.40 hours restore to his annual leave and comp balances if he was still an active employee. Since he is longer an active employee, the County paid Mr. McDonald \$13,107.47, in lieu of restoring his hours.

The 325.40 hours would have been restored to Mr. McDonald for time he used for pay periods 24 of 2018 through pay period 5 of 2019, covering the dates of November 9, 2018 through February 28, 2019.

If the above statement it's not sufficient to support a recalculation of my retirement allowance, please advise exactly what statement would satisfy OCERS.

I do understand that there are 2 separate entities that need to communicate and I am doing my best to facilitate exchange of

25

information. I am asking OCERS work collaboratively to resolve this issue quickly.

I take this matter seriously and strongly believe the 35.55 hours in question, should be included in my FAS. For me, it is a matter of doing the right thing as the difference in my monthly allowance would be minimal.

As Ms. Jenike stated during the Board meeting, the continuance of this matter will further use OCERS resources. I agree with her. I too don't want to continue to spend more energy than needed on this. I am hopeful there will be a satisfactory conclusion in the near future. It does not need to become a legal matter.

Respectfully,

Kevin

On Wednesday, April 21, 2021, 12:22:24 AM EDT, Lamberson, Jeff <jlamberson@ocers.org> wrote:

Mr McDonald

Thank you again for your email. I think I was direct at what would be needed for OCERS to consider your request. I will repeat it here.

OCERS has not received anything from the County indicating that your leave hours would be restored and should not have been used during your leave of absence. Until such documentation, clearly stating from the County that they are restoring these hours to you, is received from the County, OCERS has no evidence supporting a recalculation of your retirement allowance.

Please let me know if you have any further questions

Respectfully

Jeff Lamberson

On Apr 20, 2021, at 5:46 PM, Kevin McDonald <keymacib@yahoo.com> wrote:

OCERS has not received anything from the County indicating that your leave hours would be restored and should not have been used during your leave of absence. Until such documentation is received from the County, OCERS has no evidence supporting a recalculation of your retirement allowance.

 KM - Timesheet Correction.docx  
91.5kB

26



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

---

### Purpose and Background

1. The purpose of the Orange County Employees Retirement System (“OCERS,” “System,” or “Plan”) *Overpaid and Underpaid Plan Benefits Policy* (“policy”) is to provide a framework that the System can use as a basis for resolving erroneous payments of Plan benefits to members and their beneficiaries. In the event that an overpayment is the result of a felony conviction OCERS Administrative Procedure (OAP) *Felony Forfeitures* shall be used as a basis for resolution. 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 in a prudent manner. The Internal Revenue Service requires that operational failures be corrected in a prompt, reasonable, and consistent manner that attempts to place the retirement system in the position it would have been in had the erroneous payment not occurred.

### Policy Objectives

2. Members and their beneficiaries (herein referred to as “members”) have a right to accurate pension benefit payments. No member has the right to receive or retain retirement benefit payments that exceed the amounts to which a member is entitled, and no member may be deprived of any benefit payments that he or she is entitled to receive. Subject to all applicable laws and consistent with this policy and the procedures established by the Board, it shall be OCERS’ policy to make every reasonable effort to recover from a member the amount of any overpaid Plan benefits, and remit to a member the amount of any underpaid Plan benefits.

### Policy Guidelines

3. After discovery of overpaid or underpaid benefits, and within a reasonable period of time after written notification to the affected member, OCERS will correct the benefit payment amount prospectively and/or pay to the member, or collect from the member, through lump sum or installment payments the amounts to which the member or the Plan is entitled in accordance with this policy and applicable law.
4. These policies and procedures are designed for use when calculation and other errors affect an individual member's retirement benefits. In the event of a system-wide error that affects multiple members’ benefits, 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.



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

---

### Policy Procedures for Overpaid Benefits

6. *Appropriate Interest.* When an overpayment of Plan benefits is discovered more than ninety (90) days after the member/payee's initial benefit payment, OCERS will make a prospective adjustment to the member's benefit and take all reasonable steps to recover the full amount of all overpayments, going back to the inception of the error, and charging "appropriate interest," as defined below, compounded annually during the period in which the benefit overpayments were made and also during any repayment period (*i.e.*, applied to the outstanding amount due until fully repaid).
  - a. In cases where there is evidence that the benefit overpayment resulted from fraud or dishonest conduct by the member/payee or because the member/payee provided, or caused to be provided, inaccurate information to OCERS or the member's employer, then "appropriate interest" shall be determined using the System's actuarially assumed rate of return as of the date OCERS sets for commencing repayment, and charged to the member/payee.
  - b. If the benefit overpayment was solely the result of an error by OCERS and/or the member's employer, then "appropriate interest" shall be equal to the Systems actuarial assumed rate of return as of the date OCERS sets for commencing repayment, and charged to the member's employer as an administrative expense, without amortization.
  - c. Notwithstanding the above, any reduction in the member/payee's ongoing monthly benefit will be limited to a maximum of 15% of the gross monthly benefit. The balance due will be paid over time, subject to this limitation.
7. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpaid benefits only where the cumulative total amount of overpaid benefits is \$100 or more. Accordingly, OCERS is authorized to not seek recovery of any such overpaid benefits where the total amount overpaid to the member less than \$100.
8. When recovering benefit overpayments, the following apply:
  - a. *Director of Member Services:* When the total amount of such overpaid benefits, not including interest, is \$10,000 or less, the Director of Member Services shall have authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
  - b. CEO:
    - i. Regardless of the amount of the Plan's claim against the member, the CEO shall have the authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
    - ii. In addition, 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.



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

---

- c. *Board*: Only the Board may compromise claims in which the total amount of such overpaid benefits, not including interest, is greater than \$1,000.
  - d. *Compromising claims*: The amount of the Plan's claim for overpaid benefits is the difference between the amounts actually paid to 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.
  - e. *Reporting*: Every year, for cases involving benefit overpayments the Director of Member Services shall provide a report to the Board.
9. The Board adopts the following procedures for accomplishing the recovery of overpaid Plan benefits:
- a. Upon discovery of the benefit overpayment, OCERS will send a letter by certified mail, return receipt requested, or by express delivery service, to the member. Subject to the provisions of this Policy, the letter will provide the following information to the member regarding the overpaid benefits:
    - i. Provide notice of the prospective adjustment to the member's benefit payment (to reflect the correct amount);
    - ii. Request payment to OCERS of the amount of overpaid benefits with appropriate interest; and
    - iii. Unless otherwise determined by the Board, the CEO, or the Director of Member Services (see sections 8.a. and 8.b., above) or, if a repayment plan for a longer period is needed due to the limitation described section 6.b.ii., above, the letter will set a repayment plan with two options:
      - *Option 1* – equal installments deducted from the member's monthly benefit over the same length of time that the overpaid benefits occurred, with "appropriate interest" (as that phrase is defined in section 6 above) applied during the overpayment period and during the repayment period; and
      - *Option 2* – lump sum payment to the Plan for the full amount overpaid, with "appropriate interest" (as that phrase is defined in section 6 above) applied during the overpayment period.
  - b. OCERS may pursue all legal remedies to collect such overpaid Plan benefits, including making a claim on an 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



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

---

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.

- c. OCERS will maintain a permanent record of all amounts of such overpaid Plan benefits and the repayment to OCERS of those overpaid benefits.

### Policy Procedures for Underpaid Benefits

10. When the Plan has underpaid benefits to the member, and the underpayment is discovered more than 90 days after the member/payee's initial benefit payment, the member shall be entitled to a prospective adjustment to his or her retirement benefits necessary to correct the error, as well as a lump sum payment for all past amounts owed as a result of the error, with interest compounded annually at the rate of 3%. Interest shall accrue on the amounts owed from the date of each underpaid benefit to the date of the lump sum corrective payment. The payment shall be made within forty-five (45) days of discovery and receipt of all information needed to correct the account.
11. If a member who was underpaid benefits has died 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 has not been 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 underpaid benefits and any amounts that have been transferred into the pension reserve fund.
12. If the total amount that the Plan owes to the member is \$75 or less, the Plan is not required to make the corrective distribution if the reasonable direct costs of processing and delivering the distribution to the member would exceed the amount of the distribution.

### Member Appeal Rights

13. 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 benefits.
14. The appeal process will generally follow the same pattern as benefit appeals.
  - a. The member will first appeal a staff decision regarding an erroneous payment to the Director of Member Services. The Director of Member Services shall respond to the member in writing.
  - b. If the member does not agree with the decision of the Director of Member Services, the member may appeal that decision, in writing and within forty-five (45) days of mailing of the decision by the Director of Member Services, to the CEO. The CEO shall respond to the member in writing.



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

---

- c. If the member does not agree with the decision of the CEO, the member may appeal the matter, in writing and within forty-five (45) days of mailing of the decision by the CEO, to the Board.
- d. The Board will hear the matter at a regularly scheduled meeting giving reasonable notice to the member so the member may appear at the meeting. Staff will provide background information and documentation to the Board to assist it in making its decision. After due consideration, the Board shall vote on the matter and instruct Member Services staff to notify the member in writing of the Board's determination.
- e. If the member disagrees with the determination of the Board, the member may request, in writing and within forty-five (45) days of the date of mailing of the Board's decision, an administrative hearing of the matter.
- f. The matter will then be scheduled for administrative hearing pursuant to OCERS' Board of Retirement Policy for Administrative Hearings.
- g. The findings and recommendations of the hearing officer shall be reviewed by staff, and staff shall make a recommendation to the Board to take action pursuant to Government Code Section 31534. If the Board adopts the recommendation of the hearing officer, that decision of the Board shall be final, and Member Services staff will inform the member of the Board's decision in writing with a proof of service attached. Notice to the member of the Board's final decision shall signify exhaustion of the member's administrative remedies.
- h. This process may be adjusted in cases where the initial determination is made by the CEO.
- i. Offsets and other collection efforts will be stayed during the pendency of the above-outlined 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

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

### Policy History

- 16. This policy was adopted by the Board of Retirement on May 16, 2016 and amended on October 21, 2019.



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits 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

10/21/19

Date





## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Board of Retirement  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT:** **ADOPTION OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION IN THE MATTER OF THE APPLICATION OF JAMES B. MORELL FOR A RECALCULATED RETIREMENT ALLOWANCE (ON REMAND FROM THE LOS ANGELES COUNTY SUPERIOR COURT AFTER JUDGMENT ON PEREMPTORY WRIT OF MANDATE)**

---

### Recommendation

Staff recommends that the Board adopt the proposed Findings of Fact, Conclusions of Law, and Decision, attached hereto as Exhibit B, in the matter of *The Application of James B. Morell for a Recalculated Retirement Allowance*.

### Background/Discussion

Member James B. Morell (the Applicant) filed a Writ Petition challenging the Board's administrative decision to exclude his OBP benefits from the calculation of his retirement benefits based on its application of a 2002 settlement agreement from the *In re Retirement Cases* litigation (the 2002 Settlement Agreement). The Court ultimately granted, in part, the Writ Petition due to the fact that the Board had only determined that Applicant's OBP benefits were not pensionable under the 2002 Settlement Agreement, but had not evaluated whether OBP benefits were otherwise pensionable under the CERL. Accordingly, the Court issued a Writ directing the Board to set aside its decision dated October 18, 2018, and to reconsider the case on remand consistent with the Court's Judgment.

The Court's Judgment and Writ instructed the Board that on remand "the Board shall not limit the issues for consideration to (1) whether OCERS and [Applicant] were bound by the 2002 Settlement Agreement and the Judgment entered thereon, and (2) whether [Applicant's] retirement allowance had been calculated in accordance with the Settlement Agreement and Judgment. Board shall decide [Applicant's] contentions that OCERS improperly excluded OBP benefits from the calculation of his final compensation separate and apart from the Settlement Agreement."

On December 13, 2021, at its regularly scheduled board meeting, the Board addressed the issue as directed by the Court's Judgment and Writ and determined that the exclusion of OBP benefits from "compensation earnable" was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement.



## Memorandum

---

On December 13, 2021, the Board:

1. Set aside its October 18, 2018, decision wherein it denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment";
2. Heard argument and considered evidence submitted by Applicant and OCERS' staff, and asked questions to both;
3. Denied the Application of James B. Morell for a Recalculated Retirement Allowance; and
4. Directed Staff to prepare the Proposed Findings of Fact, Conclusions of Law, and Decision for the Board's final consideration at its January 18, 2022 meeting.

On December 22, 2021, OCERS staff served its preliminary Proposed Findings of Fact, Conclusions of Law, and Decision on the Applicant. On January 4, 2022, Applicant served his Objections to the Proposed Findings of Fact, Conclusions of Law, and Decision on OCERS. OCERS staff reviewed Applicant's Objections and revised the Proposed Findings of Fact, Conclusions of Law, and Decision to address some of Applicant's objections. The revisions are reflected in redline in the document attached hereto as Exhibit A. Also attached hereto, as Exhibit B, is a clean copy of the revised Proposed Findings of Fact, Conclusions of Law, and Decision for the Board's final consideration.

OCERS' preliminary Proposed Findings of Fact, Conclusions of Law, and Decision served on December 22, 2021 is attached hereto as Exhibit C. Petitioner's Objections to the same served on January 4, 2022 is attached hereto as Exhibit D. The transcript of the OCERS Board's meeting held on December 13, 2021 in this matter is attached hereto as Exhibit E.

Regarding the scope of the issue to be determined on remand, the Court's July 16, 2021 Judgment and Writ control the scope of the issue. The issue in the Proposed Findings of Fact, Conclusions of Law, and Decision accords with the Court's July 16, 2021 Judgment and Writ, and is broad enough to encompass Petitioner's alleged three issues for determination on remand. Staff recommends the Board adopt the proposed Findings of Fact, Conclusions of Law and Decision, Exhibit B hereto, in the matter of *The Application of James B. Morell for a Recalculated Retirement Allowance*.

### Submitted by:

Gina M. Ratto  
General Counsel

# Exhibit A

BEFORE THE BOARD OF RETIREMENT OF  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

**FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION**

**In the Matter of the Application of James B. Morell,  
A Member of the Orange County Employees System  
For a Recalculated Retirement Allowance**

**I. FACTUAL BACKGROUND**

James B. Morell (“Applicant”) was employed by the Orange County Superior Court as a research attorney for approximately 21 years, from August 1992 to February 2014. Morell became a member of the Orange County Employees Retirement System (“OCERS”) on October 14, 1994, and retired on February 21, 2014.

When calculating Applicant’s final average salary, OCERS excluded from his compensation his Optional Benefit Plan (“OBP”) payments he received from his employer under the Orange County Superior Court’s IRS Section 125 Plan. The Orange County Superior Court’s IRS Section 125 Plan provided for \$3,500.00 in annual OBP benefits that can be allocated for certain reimbursements or taken in taxable cash.

Applicant contended that the OBP payments he received in varying amounts in his final compensation period should be included as “compensation earnable” for purposes of calculating his final average salary and ultimate retirement allowance. Specifically, Applicant claimed that under the IRS 125 Plan’s OBP program, he received non-taxable health/dental care reimbursement payments in the total amounts of \$2,500.00 in 2011, \$700.00 in 2012, \$2,500.00 in 2013, and \$1,100.00 in early 2014. The remainder of the \$3,500 benefit was paid as taxable cash (\$1,000.00 in 2011, \$2,800.00 in 2012, \$1,000.00 in 2013, and \$2,400.00 in 2014).

Upon his retirement in February 2014, the OCERS’ staff excluded the OBP payments received by Applicant from his retirement benefits calculations.

**II. PROCEDURAL BACKGROUND**

This matter began with Applicant’s appeal to the OCERS Director of Member Services and CEO. Appellant appealed the OCERS’ staff’s determination to exclude his OBP benefits from the calculation of his retirement allowance. Both the Director of Member Services and the CEO upheld OCERS’ staff’s determination, and Applicant then sought review of the determination by the OCERS’ Board of Retirement (“Board”).

On August 17, 2015, the Board denied Applicant’s request to include his OBP benefits in his compensation earnable used to calculate his final average salary and retirement allowance.

Applicant timely requested an administrative hearing to challenge the Board's decision, and an administrative hearing was held on May 5, 2017, before Hearing Officer Snider.

On November 29, 2017, Hearing Officer Snider issued his Findings of Fact, Conclusions of Law, and Recommended Decision. He recommended that "the computation of [Applicant's] retirement allowance be maintained as accurate in light of the 2002 agreement that settled the litigation between OCERS and its membership class and associations" in the *In re Retirement Cases* following the decision in *Ventura County Deputy Sheriff's Assn. v. Board of Retirement* (1997) 16 Cal.4th 483 ("2002 Settlement Agreement"). He further recommended that "the Board reexamine the portion of the settlement that excludes from pensionability flexible benefits received by employees as taxable cash, and that the Board consider pursuing an amendment of the Superior Court judgment on the basis that it precludes taxable cash received under the Optional Benefit Plan from counting in the determination of final compensation."

The Hearing Officer's recommendations were presented to the Board at its August 20, 2018 meeting. On August 20, 2018, the Board voted to set aside the Hearing Officer's recommendations and thereafter denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment." Based on its determination in reliance upon the 2002 Settlement Agreement, the Board issued its Findings of Fact, Conclusions of Law and Decision dated October 18, 2018.

On January 15, 2019, Applicant filed a Petition pursuant to Code of Civil Procedure section 1094.5 in the Orange County Superior Court to challenge the Board's administrative decision to apply the 2002 Settlement Agreement to exclude the OBP benefits from the base compensation upon which Applicant's retirement benefits were calculated.<sup>1</sup> On August 21, 2020, the Court denied the writ petition on the grounds that the terms of the 2002 Settlement Agreement that excluded OBP payments from pensionable treatment applied to Applicant; and held that OCERS had properly calculated Applicant's retirement benefits under the agreement.

Applicant timely moved for reconsideration of the court's ruling on the writ petition, based in part on new case authority, *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032, which held in part that a county retirement board's settlement agreement must comport with the terms of the County Employee Retirement Law of 1973 ("CERL"). On reconsideration, the Court granted, in part, the writ petition due to the fact that the Board had only determined that Applicant's OBP benefits were not pensionable under the 2002 Settlement Agreement, but had not evaluated whether OBP benefits were otherwise pensionable under the CERL. Accordingly, the Court issued a Writ directing the Board to set aside its decision dated October 18, 2018, and to reconsider the case on remand consistent with the Court's Judgment.

The Court's Judgment and Writ instructed the Board that on remand "the Board shall not limit the issues for consideration to (1) whether OCERS and [Applicant] were bound by the 2002

---

<sup>1</sup> On June 28, 2019, the Orange County Superior Court transferred the matter to Los Angeles Superior Court pursuant to Government Code section 69740, subdivision (b).

Settlement Agreement and the Judgment entered thereon, and (2) whether [Applicant's] retirement allowance had been calculated in accordance with the Settlement Agreement and Judgment. Board shall decide [Applicant's] contentions that OCERS improperly excluded OBP benefits from the calculation of his final compensation separate and apart from the Settlement Agreement.”

Thus, in the present administrative proceeding on remand, the issue before the Board is whether the exclusion of OBP benefits from “compensation earnable” was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement.

### **III. REMAND PROCEEDING**

On September 20, 2021, OCERS provided notice to Applicant: (1) that his matter would be heard on remand by the Board at its regularly scheduled public meeting on December 13, 2021, (2) of the briefing schedule wherein he and OCERS would exchange Opening Briefs and Evidence by October 21, 2021 and Response Briefs by November 18, 2021, and (3) that each party would have 20 minutes to address the Board in the remand proceeding.

On October 13, 2021, Applicant and OCERS stipulated to the Administrative Record on remand, which is attached hereto as Exhibit 1. The stipulated Administrative Record on Remand included: the prior administrative record, the Judgment dated July 16, 2021, the Preemptory Writ of Mandate dated July 16, 2021, and any document previously filed in Case No. 30-2019-01043847, which was submitted by October 21, 2021 in this remand proceeding in support of a citation in either the Applicant's or OCERS's Opening Brief.

On October 21, 2021, the parties exchanged their respective Opening Briefs and Evidence. On November 18, 2021, OCERS served an Amended Opening Brief and Amended Declaration to cure citation errors to the administrative record. That same day on November 18, 2021, the parties exchanged their Response Briefs. On November 19, 2021, OCERS' staff provided the Board with the electronic copies of the aforementioned pleadings, declarations and evidence attached thereto, and the prior Administrative Record consisting of approximately 2217 pages of Bates stamped documents.

On November 22, 2021, Applicant was given timely notice that the matter would be considered as Agenda Item DA-2 at the Board's meeting on December 13, 2021, and the Board duly notice the meeting and Agenda Item DA-2, as required by law.

On November 22, 2021, Applicant was given notice that both he and OCERS' counsel would each have a maximum of twenty (20) minutes to present oral argument to the Board. Applicant was also given notice of the staff's recommendation to the Board. Staff recommended that the Board; (1) set aside its prior administrative decision of October 18, 2018 in this matter, and (2) reconsider the Application of James B. Morell for a Recalculated Retirement Allowance in light of the Superior Court's Judgment and Writ, wherein the Board is directed by the Court to decide the Applicant's contentions that OCERS improperly excluded Optional Benefit Plan benefits from the calculation of his final compensation separate and apart from the 2002

Settlement Agreement in *In re Retirement Cases*, Judicial Council Coordination Proceeding No., 4049 in San Francisco County Superior Court.

In advance of the December 13, 2021 Board meeting, the Board received and reviewed the pleadings and evidence mentioned above and the electronic copy of the Bates stamped Administrative Record.

On December 13, 2021, the Board, by unanimous vote, set aside its October 18, 2018, decision wherein it denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment."

After review and consideration of the pleadings, evidence and oral argument by both Applicant and OCERS' Counsel, on December 13, 2021, the Board voted unanimously to deny Applicant's Application for a recalculated retirement allowance. The Board further directed staff to prepare and serve on Applicant proposed Findings of Fact, Conclusions of Law and Decision by December 22, 2021. The Board further gave Applicant until January 4, 2021, to submit suggested changes and/or objections to the proposed Findings of Fact, Conclusions of Law and Decision. The proposed Findings of Fact, Conclusions of Law and Decision along with Applicant's suggested changes and/or objections will be brought before the Board for its final consideration at its next regularly scheduled public meeting on January 18, 2022.

The audio and video recording of the Board proceedings conducted in this matter on December 13, 2021, as well as the transcript prepared by the Court Reporter present during the December 13, 2021 Board meeting are incorporated herein by this reference and are made part of the administrative record of this matter.

#### **IV. ISSUE**

The issue the Board decided was whether the exclusion of OBP benefits from Applicant's "compensation earnable" was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement applicable to OCERS.

#### **V. SUBMITTED EVIDENCE**

Each party submitted evidence attached to their Opening and Response Briefs. In addition, the Administrative Record consisted of approximately 2217 pages of documents Bates Stamped JAMES\_MORELL 0001- 2217. Attached hereto as Exhibit 1 is the Stipulation Re: Administrative Record on Remand and the index to the Administrative Record that was electronically submitted to the Board is attached hereto as Exhibit 2.

#### **VI. FINDINGS OF FACT**

1. The Board finds the facts stated in Sections I through V, inclusive, above.

2. On June 15, 1990, the Legislature enacted Government Code section 31460.1. Section 31460.1 provided: ““Compensation’ *shall not include* employer payments, including *cash payments*, made to, or on behalf of, their employees who have elected to participate *in a flexible benefits program*, where those payments reflect amounts that exceeds [*sic*] ... their employees’ salaries. [¶] This section shall not be operative in any county until the time the board of supervisors shall, by resolution adopted by a majority vote, makes [*sic*] this section applicable in the county.”
3. On December 18, 1990, the Orange County Board of Supervisors (“County”), by a majority vote, adopted Resolution 90-1551 wherein it adopted Government Code § 31460.1 of the County Employees Retirement Law of 1937 (“CERL”) effective in Orange County as of January 1, 1991. The Orange County Board of Supervisors has not repealed Resolution 90-1551.
4. On May 11, 1992, the Legislature repealed Section 31460.1 by Senate Bill No. 193 (Stats. 1992, ch. 45, §1, p. 58.) (“SB 193”). SB 193 contained a savings clause: “Sec. 2 - Nothing in this act is intended to, or shall be construed to, affect the validity of any action taken by a county pursuant to Section 31460.1 of the Government Code, prior to the effective date of this act.” (Gov. Code, § 31460.1, notes.)
5. On February 9, 1998, the Board adopted Resolution 98-001, which excluded flexible benefits provided in-kind and paid in cash from compensation earnable based, in part, upon the County’s Resolutions 90-1551 which excluded the same from compensation.
6. Resolution 98-001, states in relevant part:
 

Elements to be Excluded From “Compensation Earnable”.

Remuneration or other value to the employee neither earned or payable in cash to the employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be excluded from “compensation earnable”, including but not limited to the following items, and others substantially similar to them:

. . .

Flexible Benefits (“Cafeteria Plan”) provided in-kind

Flexible Benefits (“Cafeteria Plan”) paid in cash to the extent paid to members retiring on and after January 1, 1991”
7. Applicant began working for the Orange County Superior Court as a research attorney on August 13, 1992. He became a member of OCERS on October 14, 1994.
8. During his employment as a research attorney, Appellant participated in the Orange County Superior Court’s IRS 125 Plan that provided for flexible benefits, ~~including~~ under the OBP program.



9. The Orange County Superior Court's IRS 125 Plan is applicable only if it is an elective plan under the IRS rules.
10. The Orange County Superior Court's Section 125 Plan provides that a "Participant" is any "Eligible Employee who elects to become a participant as provided in Section 2."
11. Section 2.2 of the Section 125 Plan, entitled "**Application to Participate**" states:

Any Eligible Employees **shall, during the applicable Open Enrollment Period,** complete and submit to the Administrator Enrollment Documentation. The election made pursuant to the Enrollment Documentation shall be irrevocable until the end of the applicable Contribution Period unless the Participant is entitled to change his or her elections pursuant to Section 4.6 hereof."

A Participant shall not continue participating in the Plan for subsequent Contribution Periods unless he or she completes and submits new Enrollment Documentation during each Open Enrollment Period.
12. The Orange County Superior Court's IRS 125 Plan's OBP program provided that the employer would "credit OBP Eligible Employees with a specific amount of OBP Dollars each Plan Year." The eligible employee can elect to allocate his OBP Dollars in the amount of \$3,500 to pay for certain benefits or to receive it as a taxable lump sum cash payment.
13. The Orange County Superior Court's IRS 125 Plan's OBP program in paragraph 1.21 provided that : "Health Care Reimbursement Account means the account established for a Participant pursuant to this Plan to which part of his or her Salary Redirection and/or OBP Dollars may be credited and from which all allowable Health Care Expenses may be reimbursed. Such Health Care Reimbursement Account is not a real account, but is established and maintained for bookkeeping purposes only."
14. The 2011 and 2013 Orange County Superior Court Personnel Policies and Regulations provided that "[a]ny portion of the optional benefit not incurred within the plan period shall remain the Court or County funds."
15. The 2011 and 2013 Orange County Superior Court Personnel Policies and Regulations provided that "[t]he amount in a Participant's Health Care Reimbursement Account as of the end of any Contribution Period (and after the processing of all claims for each Contributions Period pursuant to Section 8 hereof) shall be forfeited to the Employer and deposited into the Employer's benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason."

16. On January 27, 2014, Applicant filed his application for retirement with OCERS, with a retirement date of February 21, 2014.
17. Upon receipt of Applicant's retirement application, OCERS calculated his retirement allowance based on the following statutory formula: Final Compensation X /Years of Service X Retirement Formula (Plan J/2.7% @ 55/\$31676.19).
18. Pursuant to Government Code section 31462, subd. (a), the Applicant's three year measuring period for the purpose of calculating his retirement allowance is February 7, 2011 to February 6, 2014.
19. During his measuring period, i.e., February 7, 2011 to February 6, 2014, the Applicant elected to allocate his OBP Dollars to a Health Care Reimbursement Account and to taxable lump sum cash payments.
20. During his measuring period, i.e., February 7, 2011 to February 6, 2014, Applicant elected to allocate a portion of the \$3,500.00 OBP Dollars to the non-taxable Health Care Reimbursement Account in the following amounts: \$2,500.00 in 2011, \$700.00 in 2012, \$2,500.00 in 2013, and \$1,100.00 in early 2014.
21. The Applicant provided evidence of his elected allocation of his OBP Dollars during his measuring period, but he failed to submit documentary evidence to establish that he actually received any reimbursement from the Health Care Reimbursement Account. He also failed to present evidence of the date(s) and amount(s) of any alleged reimbursements during the relevant measuring period. Thus, he has failed to establish that the OBP Dollars he allocated to the Health Care Reimbursement Account were not forfeited.
22. During his measuring period, i.e., February 7, 2011 to February 6, 2014, Applicant elected to allocate a portion of the \$3,500.00 OBP Dollars to a taxable lump sum payment in the following amounts: \$1,000.00 in 2011, \$2,800.00 in 2012, \$1,000.00 in 2013, and \$2,400.00 in 2014.
23. Applicant did not pay any employee contributions to fund the cost of paying for that portion of his retirement allowance that would be derived from receipt of his claimed OBP benefits.
24. Upon the Applicant's retirement on February 21, 2014, OCERS' staff excluded the OBP benefits received by the Applicant from compensation and compensation earnable when calculating his retirement allowance.
25. The OCERS staff properly excluded Applicant's OBP benefits under the CERL at the time of his retirement and properly applied the OCERS Board's Resolution 98-001 in its calculation of the Applicant's retirement allowance.

26. To the extent any of the foregoing Findings of Fact are Conclusions of Law, the Board so concludes.

## VII. CONCLUSIONS OF LAW

1. The Orange County Board of Supervisor's Resolution 90-1551 made CERL section 31460.1 operative as a carve-out effective in Orange County as of January 1, 1991, thereby excluding from the definition of "compensation" (under Government Code § 31460) payments made by an employer to an employee or on behalf of an employee, for that employee's participation in a flexible benefit plan, such as the OBP, regardless of whether paid in cash.
2. The savings clause in SB 193 is part of the CERL, and was and continues to be valid and enforceable.
3. In including the saving clause in SB 193, the Legislature intended to preserve Section 31460.1 in counties where the Board of Supervisors adopted that carve-out by resolution adopted by a majority vote.
4. Pursuant to SB 193's saving clause, the Orange County Board of Supervisor's Resolution 90-1551, as action taken by the county prior to May 11, 1992, remains valid and continues the validity of Section 31460.1 currently in the County of Orange.
5. By adopting Section 31460.1 by Resolution 90-1551, the County precluded the OCERS Board from including flexible benefit payments such as OBP benefits in a member's compensation, compensation earnable and final average salary.
6. The Applicant elected to participate in the OBP program by allocating the \$ 3,500 OBP Dollars to the Health Care Reimbursement Account and to lump sum taxable cash payments each year during his measuring period, i.e., between February 7, 2011 and February 6, 2014.
7. OCERS' staff's exclusion of OBP benefits (both for health and dental reimbursements and taxable cash payments within the three year measuring period) from the Applicant's compensation and compensation earnable complied with the CERL at the time the Applicant retired in 2014, according to Section 31460.1, the County's Resolution 90-1551, SB 193's savings clause, and the Board's Resolution 98-001 (which is based in part on County's Resolution 90-1551), notwithstanding the 2002 Settlement Agreement.
8. Since the Applicant received the \$1,000 taxable lump sum payment on January 7, 2011, outside the three year measuring period between February 7, 2011 and February 6, 2014, this amount cannot be included in calculating his final compensation.

9. To the extent any of the foregoing Conclusions of Law are Findings of Fact, the Board so finds.

**VIII. DECISION**

The Application of James B. Morell for a recalculated retirement allowance is DENIED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Frank Eley, Chair of the Board of Retirement

# Exhibit B

BEFORE THE BOARD OF RETIREMENT OF  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

**FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION**

**In the Matter of the Application of James B. Morell,  
A Member of the Orange County Employees System  
For a Recalculated Retirement Allowance**

**I. FACTUAL BACKGROUND**

James B. Morell (“Applicant”) was employed by the Orange County Superior Court as a research attorney for approximately 21 years, from August 1992 to February 2014. Morell became a member of the Orange County Employees Retirement System (“OCERS”) on October 14, 1994, and retired on February 21, 2014.

When calculating Applicant’s final average salary, OCERS excluded from his compensation his Optional Benefit Plan (“OBP”) payments he received from his employer under the Orange County Superior Court’s IRS Section 125 Plan. The Orange County Superior Court’s IRS Section 125 Plan provided for \$3,500.00 in annual OBP benefits that can be allocated for certain reimbursements or taken in taxable cash.

Applicant contended that the OBP payments he received in varying amounts in his final compensation period should be included as “compensation earnable” for purposes of calculating his final average salary and ultimate retirement allowance. Specifically, Applicant claimed that under the IRS 125 Plan’s OBP program, he received non-taxable health/dental care reimbursement payments in the total amounts of \$2,500.00 in 2011, \$700.00 in 2012, \$2,500.00 in 2013, and \$1,100.00 in early 2014. The remainder of the \$3,500 benefit was paid as taxable cash (\$1,000.00 in 2011, \$2,800.00 in 2012, \$1,000.00 in 2013, and \$2,400.00 in 2014).

Upon his retirement in February 2014, the OCERS’ staff excluded the OBP payments received by Applicant from his retirement benefits calculations.

**II. PROCEDURAL BACKGROUND**

This matter began with Applicant’s appeal to the OCERS Director of Member Services and CEO. Appellant appealed the OCERS’ staff’s determination to exclude his OBP benefits from the calculation of his retirement allowance. Both the Director of Member Services and the CEO upheld OCERS’ staff’s determination, and Applicant then sought review of the determination by the OCERS’ Board of Retirement (“Board”).

On August 17, 2015, the Board denied Applicant’s request to include his OBP benefits in his compensation earnable used to calculate his final average salary and retirement allowance.

Applicant timely requested an administrative hearing to challenge the Board's decision, and an administrative hearing was held on May 5, 2017, before Hearing Officer Snider.

On November 29, 2017, Hearing Officer Snider issued his Findings of Fact, Conclusions of Law, and Recommended Decision. He recommended that "the computation of [Applicant's] retirement allowance be maintained as accurate in light of the 2002 agreement that settled the litigation between OCERS and its membership class and associations" in the *In re Retirement Cases* following the decision in *Ventura County Deputy Sheriff's Assn. v. Board of Retirement* (1997) 16 Cal.4th 483 ("2002 Settlement Agreement"). He further recommended that "the Board reexamine the portion of the settlement that excludes from pensionability flexible benefits received by employees as taxable cash, and that the Board consider pursuing an amendment of the Superior Court judgment on the basis that it precludes taxable cash received under the Optional Benefit Plan from counting in the determination of final compensation."

The Hearing Officer's recommendations were presented to the Board at its August 20, 2018 meeting. On August 20, 2018, the Board voted to set aside the Hearing Officer's recommendations and thereafter denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment." Based on its determination in reliance upon the 2002 Settlement Agreement, the Board issued its Findings of Fact, Conclusions of Law and Decision dated October 18, 2018.

On January 15, 2019, Applicant filed a Petition pursuant to Code of Civil Procedure section 1094.5 in the Orange County Superior Court to challenge the Board's administrative decision to apply the 2002 Settlement Agreement to exclude the OBP benefits from the base compensation upon which Applicant's retirement benefits were calculated.<sup>1</sup> On August 21, 2020, the Court denied the writ petition on the grounds that the terms of the 2002 Settlement Agreement that excluded OBP payments from pensionable treatment applied to Applicant; and held that OCERS had properly calculated Applicant's retirement benefits under the agreement.

Applicant timely moved for reconsideration of the court's ruling on the writ petition, based in part on new case authority, *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032, which held in part that a county retirement board's settlement agreement must comport with the terms of the County Employee Retirement Law of 1973 ("CERL"). On reconsideration, the Court granted, in part, the writ petition due to the fact that the Board had only determined that Applicant's OBP benefits were not pensionable under the 2002 Settlement Agreement, but had not evaluated whether OBP benefits were otherwise pensionable under the CERL. Accordingly, the Court issued a Writ directing the Board to set aside its decision dated October 18, 2018, and to reconsider the case on remand consistent with the Court's Judgment.

The Court's Judgment and Writ instructed the Board that on remand "the Board shall not limit the issues for consideration to (1) whether OCERS and [Applicant] were bound by the 2002

---

<sup>1</sup> On June 28, 2019, the Orange County Superior Court transferred the matter to Los Angeles Superior Court pursuant to Government Code section 69740, subdivision (b).

Settlement Agreement and the Judgment entered thereon, and (2) whether [Applicant's] retirement allowance had been calculated in accordance with the Settlement Agreement and Judgment. Board shall decide [Applicant's] contentions that OCERS improperly excluded OBP benefits from the calculation of his final compensation separate and apart from the Settlement Agreement.”

Thus, in the present administrative proceeding on remand, the issue before the Board is whether the exclusion of OBP benefits from “compensation earnable” was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement.

### **III. REMAND PROCEEDING**

On September 20, 2021, OCERS provided notice to Applicant: (1) that his matter would be heard on remand by the Board at its regularly scheduled public meeting on December 13, 2021, (2) of the briefing schedule wherein he and OCERS would exchange Opening Briefs and Evidence by October 21, 2021 and Response Briefs by November 18, 2021, and (3) that each party would have 20 minutes to address the Board in the remand proceeding.

On October 13, 2021, Applicant and OCERS stipulated to the Administrative Record on remand, which is attached hereto as Exhibit 1. The stipulated Administrative Record on Remand included: the prior administrative record, the Judgment dated July 16, 2021, the Preemptory Writ of Mandate dated July 16, 2021, and any document previously filed in Case No. 30-2019-01043847, which was submitted by October 21, 2021 in this remand proceeding in support of a citation in either the Applicant's or OCERS's Opening Brief.

On October 21, 2021, the parties exchanged their respective Opening Briefs and Evidence. On November 18, 2021, OCERS served an Amended Opening Brief and Amended Declaration to cure citation errors to the administrative record. That same day on November 18, 2021, the parties exchanged their Response Briefs. On November 19, 2021, OCERS' staff provided the Board with the electronic copies of the aforementioned pleadings, declarations and evidence attached thereto, and the prior Administrative Record consisting of approximately 2217 pages of Bates stamped documents.

On November 22, 2021, Applicant was given timely notice that the matter would be considered as Agenda Item DA-2 at the Board's meeting on December 13, 2021, and the Board duly notice the meeting and Agenda Item DA-2, as required by law.

On November 22, 2021, Applicant was given notice that both he and OCERS' counsel would each have a maximum of twenty (20) minutes to present oral argument to the Board. Applicant was also given notice of the staff's recommendation to the Board. Staff recommended that the Board; (1) set aside its prior administrative decision of October 18, 2018 in this matter, and (2) reconsider the Application of James B. Morell for a Recalculated Retirement Allowance in light of the Superior Court's Judgment and Writ, wherein the Board is directed by the Court to decide the Applicant's contentions that OCERS improperly excluded Optional Benefit Plan benefits from the calculation of his final compensation separate and apart from the 2002



Settlement Agreement in *In re Retirement Cases*, Judicial Council Coordination Proceeding No., 4049 in San Francisco County Superior Court.

In advance of the December 13, 2021 Board meeting, the Board received and reviewed the pleadings and evidence mentioned above and the electronic copy of the Bates stamped Administrative Record.

On December 13, 2021, the Board, by unanimous vote, set aside its October 18, 2018, decision wherein it denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment."

After review and consideration of the pleadings, evidence and oral argument by both Applicant and OCERS' Counsel, on December 13, 2021, the Board voted unanimously to deny Applicant's Application for a recalculated retirement allowance. The Board further directed staff to prepare and serve on Applicant proposed Findings of Fact, Conclusions of Law and Decision by December 22, 2021. The Board further gave Applicant until January 4, 2021, to submit suggested changes and/or objections to the proposed Findings of Fact, Conclusions of Law and Decision. The proposed Findings of Fact, Conclusions of Law and Decision along with Applicant's suggested changes and/or objections will be brought before the Board for its final consideration at its next regularly scheduled public meeting on January 18, 2022.

The audio and video recording of the Board proceedings conducted in this matter on December 13, 2021, as well as the transcript prepared by the Court Reporter present during the December 13, 2021 Board meeting are incorporated herein by this reference and are made part of the administrative record of this matter.

#### **IV. ISSUE**

The issue the Board decided was whether the exclusion of OBP benefits from Applicant's "compensation earnable" was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement applicable to OCERS.

#### **V. SUBMITTED EVIDENCE**

Each party submitted evidence attached to their Opening and Response Briefs. In addition, the Administrative Record consisted of approximately 2217 pages of documents Bates Stamped JAMES\_MORELL 0001- 2217. Attached hereto as Exhibit 1 is the Stipulation Re: Administrative Record on Remand and the index to the Administrative Record that was electronically submitted to the Board is attached hereto as Exhibit 2.

#### **VI. FINDINGS OF FACT**

1. The Board finds the facts stated in Sections I through V, inclusive, above.

2. On June 15, 1990, the Legislature enacted Government Code section 31460.1. Section 31460.1 provided: ““Compensation’ *shall not include* employer payments, including *cash payments*, made to, or on behalf of, their employees who have elected to participate *in a flexible benefits program*, where those payments reflect amounts that exceeds [*sic*] ... their employees’ salaries. [¶] This section shall not be operative in any county until the time the board of supervisors shall, by resolution adopted by a majority vote, makes [*sic*] this section applicable in the county.”
3. On December 18, 1990, the Orange County Board of Supervisors (“County”), by a majority vote, adopted Resolution 90-1551 wherein it adopted Government Code § 31460.1 of the County Employees Retirement Law of 1937 (“CERL”) effective in Orange County as of January 1, 1991. The Orange County Board of Supervisors has not repealed Resolution 90-1551.
4. On May 11, 1992, the Legislature repealed Section 31460.1 by Senate Bill No. 193 (Stats. 1992, ch. 45, §1, p. 58.) (“SB 193”). SB 193 contained a savings clause: “Sec. 2 - Nothing in this act is intended to, or shall be construed to, affect the validity of any action taken by a county pursuant to Section 31460.1 of the Government Code, prior to the effective date of this act.” (Gov. Code, § 31460.1, notes.)
5. On February 9, 1998, the Board adopted Resolution 98-001, which excluded flexible benefits provided in-kind and paid in cash from compensation earnable based, in part, upon the County’s Resolutions 90-1551 which excluded the same from compensation.
6. Resolution 98-001, states in relevant part:
 

Elements to be Excluded From “Compensation Earnable”.

Remuneration or other value to the employee neither earned or payable in cash to the employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be excluded from “compensation earnable”, including but not limited to the following items, and others substantially similar to them:

. . .

Flexible Benefits (“Cafeteria Plan”) provided in-kind

Flexible Benefits (“Cafeteria Plan”) paid in cash to the extent paid to members retiring on and after January 1, 1991”
7. Applicant began working for the Orange County Superior Court as a research attorney on August 13, 1992. He became a member of OCERS on October 14, 1994.
8. During his employment as a research attorney, Appellant participated in the Orange County Superior Court’s IRS 125 Plan that provided for flexible benefits under the OBP program.

9. The Orange County Superior Court's IRS 125 Plan is applicable only if it is an elective plan under the IRS rules.
10. The Orange County Superior Court's Section 125 Plan provides that a "Participant" is any "Eligible Employee who elects to become a participant as provided in Section 2."
11. Section 2.2 of the Section 125 Plan, entitled "**Application to Participate**" states:

Any Eligible Employees **shall, during the applicable Open Enrollment Period,** complete and submit to the Administrator Enrollment Documentation. The election made pursuant to the Enrollment Documentation shall be irrevocable until the end of the applicable Contribution Period unless the Participant is entitled to change his or her elections pursuant to Section 4.6 hereof."

A Participant shall not continue participating in the Plan for subsequent Contribution Periods unless he or she completes and submits new Enrollment Documentation during each Open Enrollment Period.
12. The Orange County Superior Court's IRS 125 Plan's OBP program provided that the employer would "credit OBP Eligible Employees with a specific amount of OBP Dollars each Plan Year." The eligible employee can elect to allocate his OBP Dollars in the amount of \$3,500 to pay for certain benefits or to receive it as a taxable lump sum cash payment.
13. The Orange County Superior Court's IRS 125 Plan's OBP program in paragraph 1.21 provided that : "Health Care Reimbursement Account means the account established for a Participant pursuant to this Plan to which part of his or her Salary Redirection and/or OBP Dollars may be credited and from which all allowable Health Care Expenses may be reimbursed. Such Health Care Reimbursement Account is not a real account, but is established and maintained for bookkeeping purposes only."
14. The 2011 and 2013 Orange County Superior Court Personnel Policies and Regulations provided that "[a]ny portion of the optional benefit not incurred within the plan period shall remain the Court or County funds."
15. The 2011 and 2013 Orange County Superior Court Personnel Policies and Regulations provided that "[t]he amount in a Participant's Health Care Reimbursement Account as of the end of any Contribution Period (and after the processing of all claims for each Contributions Period pursuant to Section 8 hereof) shall be forfeited to the Employer and deposited into the Employer's benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason."

16. On January 27, 2014, Applicant filed his application for retirement with OCERS, with a retirement date of February 21, 2014.
17. Upon receipt of Applicant's retirement application, OCERS calculated his retirement allowance based on the following statutory formula: Final Compensation X /Years of Service X Retirement Formula (Plan J/2.7% @ 55/\$31676.19).
18. Pursuant to Government Code section 31462, subd. (a), the Applicant's three year measuring period for the purpose of calculating his retirement allowance is February 7, 2011 to February 6, 2014.
19. During his measuring period, i.e., February 7, 2011 to February 6, 2014, the Applicant elected to allocate his OBP Dollars to a Health Care Reimbursement Account and to taxable lump sum cash payments.
20. During his measuring period, i.e., February 7, 2011 to February 6, 2014, Applicant elected to allocate a portion of the \$3,500.00 OBP Dollars to the non-taxable Health Care Reimbursement Account in the following amounts: \$2,500.00 in 2011, \$700.00 in 2012, \$2,500.00 in 2013, and \$1,100.00 in early 2014.
21. The Applicant provided evidence of his elected allocation of his OBP Dollars during his measuring period, but he failed to submit documentary evidence to establish that he actually received any reimbursement from the Health Care Reimbursement Account. He also failed to present evidence of the date(s) and amount(s) of any alleged reimbursements during the relevant measuring period. Thus, he has failed to establish that the OBP Dollars he allocated to the Health Care Reimbursement Account were not forfeited.
22. During his measuring period, i.e., February 7, 2011 to February 6, 2014, Applicant elected to allocate a portion of the \$3,500.00 OBP Dollars to a taxable lump sum payment in the following amounts: \$1,000.00 in 2011, \$2,800.00 in 2012, \$1,000.00 in 2013, and \$2,400.00 in 2014.
23. Applicant did not pay any employee contributions to fund the cost of paying for that portion of his retirement allowance that would be derived from receipt of his claimed OBP benefits.
24. Upon the Applicant's retirement on February 21, 2014, OCERS' staff excluded the OBP benefits received by the Applicant from compensation and compensation earnable when calculating his retirement allowance.
25. The OCERS staff properly excluded Applicant's OBP benefits under the CERL at the time of his retirement and properly applied the OCERS Board's Resolution 98-001 in its calculation of the Applicant's retirement allowance.

26. To the extent any of the foregoing Findings of Fact are Conclusions of Law, the Board so concludes.

## **VII. CONCLUSIONS OF LAW**

1. The Orange County Board of Supervisor's Resolution 90-1551 made CERL section 31460.1 operative as a carve-out effective in Orange County as of January 1, 1991, thereby excluding from the definition of "compensation" (under Government Code § 31460) payments made by an employer to an employee or on behalf of an employee, for that employee's participation in a flexible benefit plan, such as the OBP, regardless of whether paid in cash.
2. The savings clause in SB 193 is part of the CERL, and was and continues to be valid and enforceable.
3. In including the saving clause in SB 193, the Legislature intended to preserve Section 31460.1 in counties where the Board of Supervisors adopted that carve-out by resolution adopted by a majority vote.
4. Pursuant to SB 193's saving clause, the Orange County Board of Supervisor's Resolution 90-1551, as action taken by the county prior to May 11, 1992, remains valid and continues the validity of Section 31460.1 currently in the County of Orange.
5. By adopting Section 31460.1 by Resolution 90-1551, the County precluded the OCERS Board from including flexible benefit payments such as OBP benefits in a member's compensation, compensation earnable and final average salary.
6. The Applicant elected to participate in the OBP program by allocating the \$ 3,500 OBP Dollars to the Health Care Reimbursement Account and to lump sum taxable cash payments each year during his measuring period, i.e., between February 7, 2011 and February 6, 2014.
7. OCERS' staff's exclusion of OBP benefits (both for health and dental reimbursements and taxable cash payments within the three year measuring period) from the Applicant's compensation and compensation earnable complied with the CERL at the time the Applicant retired in 2014, according to Section 31460.1, the County's Resolution 90-1551, SB 193's savings clause, and the Board's Resolution 98-001 (which is based in part on County's Resolution 90-1551), notwithstanding the 2002 Settlement Agreement.
8. Since the Applicant received the \$1,000 taxable lump sum payment on January 7, 2011, outside the three year measuring period between February 7, 2011 and February 6, 2014, this amount cannot be included in calculating his final compensation.

9. To the extent any of the foregoing Conclusions of Law are Findings of Fact, the Board so finds.

**VIII. DECISION**

The Application of James B. Morell for a recalculated retirement allowance is DENIED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Frank Eley, Chair of the Board of Retirement

# Exhibit C

BEFORE THE BOARD OF RETIREMENT OF  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

**FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION**

**In the Matter of the Application of James B. Morell,  
A Member of the Orange County Employees System  
For a Recalculated Retirement Allowance**

**I. FACTUAL BACKGROUND**

James B. Morell (“Applicant”) was employed by the Orange County Superior Court as a research attorney for approximately 21 years, from August 1992 to February 2014. Morell became a member of the Orange County Employees Retirement System (“OCERS”) on October 14, 1994, and retired on February 21, 2014.

When calculating Applicant’s final average salary, OCERS excluded from his compensation his Optional Benefit Plan (“OBP”) payments he received from his employer under the Orange County Superior Court’s IRS Section 125 Plan. The Orange County Superior Court’s IRS Section 125 Plan provided for \$3,500.00 in annual OBP benefits that can be allocated for certain reimbursements or taken in taxable cash.

Applicant contended that the OBP payments he received in varying amounts in his final compensation period should be included as “compensation earnable” for purposes of calculating his final average salary and ultimate retirement allowance. Specifically, Applicant claimed that under the IRS 125 Plan’s OBP program, he received non-taxable health/dental care reimbursement payments in the total amounts of \$2,500.00 in 2011, \$700.00 in 2012, \$2,500.00 in 2013, and \$1,100.00 in early 2014. The remainder of the \$3,500 benefit was paid as taxable cash (\$1,000.00 in 2011, \$2,800.00 in 2012, \$1,000.00 in 2013, and \$2,400.00 in 2014).

Upon his retirement in February 2014, the OCERS’ staff excluded the OBP payments received by Applicant from his retirement benefits calculations.

**II. PROCEDURAL BACKGROUND**

This matter began with Applicant’s appeal to the OCERS Director of Member Services and CEO. Appellant appealed the OCERS’ staff’s determination to exclude his OBP benefits from the calculation of his retirement allowance. Both the Director of Member Services and the CEO upheld OCERS’ staff’s determination, and Applicant then sought review of the determination by the OCERS’ Board of Retirement (“Board”).

On August 17, 2015, the Board denied Applicant’s request to include his OBP benefits in his compensation earnable used to calculate his final average salary and retirement allowance.



Applicant timely requested an administrative hearing to challenge the Board's decision, and an administrative hearing was held on May 5, 2017, before Hearing Officer Snider.

On November 29, 2017, Hearing Officer Snider issued his Findings of Fact, Conclusions of Law, and Recommended Decision. He recommended that "the computation of [Applicant's] retirement allowance be maintained as accurate in light of the 2002 agreement that settled the litigation between OCERS and its membership class and associations" in the *In re Retirement Cases* following the decision in *Ventura County Deputy Sheriff's Assn. v. Board of Retirement* (1997) 16 Cal.4th 483 ("2002 Settlement Agreement"). He further recommended that "the Board reexamine the portion of the settlement that excludes from pensionability flexible benefits received by employees as taxable cash, and that the Board consider pursuing an amendment of the Superior Court judgment on the basis that it precludes taxable cash received under the Optional Benefit Plan from counting in the determination of final compensation."

The Hearing Officer's recommendations were presented to the Board at its August 20, 2018 meeting. On August 20, 2018, the Board voted to set aside the Hearing Officer's recommendations and thereafter denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment." Based on its determination in reliance upon the 2002 Settlement Agreement, the Board issued its Findings of Fact, Conclusions of Law and Decision dated October 18, 2018.

On January 15, 2019, Applicant filed a Petition pursuant to Code of Civil Procedure section 1094.5 in the Orange County Superior Court to challenge the Board's administrative decision to apply the 2002 Settlement Agreement to exclude the OBP benefits from the base compensation upon which Applicant's retirement benefits were calculated.<sup>1</sup> On August 21, 2020, the Court denied the writ petition on the grounds that the terms of the 2002 Settlement Agreement that excluded OBP payments from pensionable treatment applied to Applicant; and held that OCERS had properly calculated Applicant's retirement benefits under the agreement.

Applicant timely moved for reconsideration of the court's ruling on the writ petition, based in part on new case authority, *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032, which held in part that a county retirement board's settlement agreement must comport with the terms of the County Employee Retirement Law of 1973 ("CERL"). On reconsideration, the Court granted, in part, the writ petition due to the fact that the Board had only determined that Applicant's OBP benefits were not pensionable under the 2002 Settlement Agreement, but had not evaluated whether OBP benefits were otherwise pensionable under the CERL. Accordingly, the Court issued a Writ directing the Board to set aside its decision dated October 18, 2018, and to reconsider the case on remand consistent with the Court's Judgment.

The Court's Judgment and Writ instructed the Board that on remand "the Board shall not limit the issues for consideration to (1) whether OCERS and [Applicant] were bound by the 2002

---

<sup>1</sup> On June 28, 2019, the Orange County Superior Court transferred the matter to Los Angeles Superior Court pursuant to Government Code section 69740, subdivision (b).

Settlement Agreement and the Judgment entered thereon, and (2) whether [Applicant's] retirement allowance had been calculated in accordance with the Settlement Agreement and Judgment. Board shall decide [Applicant's] contentions that OCERS improperly excluded OBP benefits from the calculation of his final compensation separate and apart from the Settlement Agreement.”

Thus, in the present administrative proceeding on remand, the issue before the Board is whether the exclusion of OBP benefits from “compensation earnable” was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement.

### **III. REMAND PROCEEDING**

On September 20, 2021, OCERS provided notice to Applicant: (1) that his matter would be heard on remand by the Board at its regularly scheduled public meeting on December 13, 2021, (2) of the briefing schedule wherein he and OCERS would exchange Opening Briefs and Evidence by October 21, 2021 and Response Briefs by November 18, 2021, and (3) that each party would have 20 minutes to address the Board in the remand proceeding.

On October 13, 2021, Applicant and OCERS stipulated to the Administrative Record on remand, which is attached hereto as Exhibit 1. The stipulated Administrative Record on Remand included: the prior administrative record, the Judgment dated July 16, 2021, the Preemptory Writ of Mandate dated July 16, 2021, and any document previously filed in Case No. 30-2019-01043847, which was submitted by October 21, 2021 in this remand proceeding in support of a citation in either the Applicant's or OCERS's Opening Brief.

On October 21, 2021, the parties exchanged their respective Opening Briefs and Evidence. On November 18, 2021, OCERS served an Amended Opening Brief and Amended Declaration to cure citation errors to the administrative record. That same day on November 18, 2021, the parties exchanged their Response Briefs. On November 19, 2021, OCERS' staff provided the Board with the electronic copies of the aforementioned pleadings, declarations and evidence attached thereto, and the prior Administrative Record consisting of approximately 2217 Bates stamped documents.

On November 22, 2021, Applicant was given timely notice that the matter would be considered as Agenda Item DA-2 at the Board's meeting on December 13, 2021, and the Board duly notice the meeting and Agenda Item DA-2, as required by law.

On November 22, 2021, Applicant was given notice that both he and OCERS' counsel would each have a maximum of twenty (20) minutes to present oral argument to the Board. Applicant was also given notice of the staff's recommendation to the Board. Staff recommended that the Board; (1) set aside its prior administrative decision of October 18, 2018 in this matter, and (2) reconsider the Application of James B. Morell for a Recalculated Retirement Allowance in light of the Superior Court's Judgment and Writ, wherein the Board is directed by the Court to decide the Applicant's contentions that OCERS improperly excluded Optional Benefit Plan benefits from the calculation of his final compensation separate and apart from the 2002

Settlement Agreement in *In re Retirement Cases*, Judicial Council Coordination Proceeding No., 4049 in San Francisco County Superior Court.

In advance of the December 13, 2021 Board meeting, the Board received and reviewed the pleadings and evidence mentioned above and the electronic copy of the Bates stamped Administrative Record.

On December 13, 2021, the Board, by unanimous vote, set aside its October 18, 2018, decision wherein it denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment."

After review and consideration of the pleadings, evidence and oral argument by both Applicant and OCERS' Counsel, on December 13, 2021, the Board voted unanimously to deny Applicant's Application for a recalculated retirement allowance. The Board further directed staff to prepare and serve on Applicant proposed Findings of Fact, Conclusions of Law and Decision by December 22, 2021. The Board further gave Applicant until January 4, 2021, to submit suggested changes and/or objections to the proposed Findings of Fact, Conclusions of Law and Decision. The proposed Findings of Fact, Conclusions of Law and Decision along with Applicant's suggested changes and/or objections will be brought before the Board for its final consideration at its next regularly scheduled public meeting on January 18, 2022.

The audio and video recording of the Board proceedings conducted in this matter on December 13, 2021, as well as the transcript prepared by the Court Reporter present during the December 13, 2021 Board meeting are incorporated herein by this reference and are made part of the administrative record of this matter.

#### **IV. ISSUE**

The issue the Board decided was whether the exclusion of OBP benefits from Applicant's "compensation earnable" was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement applicable to OCERS.

#### **V. SUBMITTED EVIDENCE**

Each party submitted evidence attached to their Opening and Response Briefs. In addition, the Administrative Record consisted of approximately 2217 pages of documents Bates Stamped JAMES\_MORELL 0001- 2217. Attached hereto as Exhibit 1 is the Stipulation Re: Administrative Record on Remand and the index to the Administrative Record that was electronically submitted to the Board is attached hereto as Exhibit 2.

#### **VI. FINDINGS OF FACT**

1. The Board finds the facts stated in Sections I through V, inclusive, above.

2. On June 15, 1990, the Legislature enacted Government Code section 31460.1. Section 31460.1 provided: ““Compensation’ *shall not include* employer payments, including *cash payments*, made to, or on behalf of, their employees who have elected to participate *in a flexible benefits program*, where those payments reflect amounts that exceeds [*sic*] ... their employees’ salaries. [¶] This section shall not be operative in any county until the time the board of supervisors shall, by resolution adopted by a majority vote, makes [*sic*] this section applicable in the county.”
3. On December 18, 1990, the Orange County Board of Supervisors (“County”), by a majority vote, adopted Resolution 90-1551 wherein it adopted Government Code § 31460.1 of the County Employees Retirement Law of 1937 (“CERL”) effective in Orange County as of January 1, 1991. The Orange County Board of Supervisors has not repealed Resolution 90-1551.
4. On May 11, 1992, the Legislature repealed Section 31460.1 by Senate Bill No. 193 (Stats. 1992, ch. 45, §1, p. 58.) (“SB 193”). SB 193 contained a savings clause: “Sec. 2 - Nothing in this act is intended to, or shall be construed to, affect the validity of any action taken by a county pursuant to Section 31460.1 of the Government Code, prior to the effective date of this act.” (Gov. Code, § 31460.1, notes.)
5. On February 9, 1998, the Board adopted Resolution 98-001, which excluded flexible benefits provided in-kind and paid in cash from compensation earnable based, in part, upon the County’s Resolutions 90-1551 which excluded the same from compensation.
6. Resolution 98-001, states in relevant part:
 

Elements to be Excluded From “Compensation Earnable”.

Remuneration or other value to the employee neither earned or payable in cash to the employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be excluded from “compensation earnable”, including but not limited to the following items, and others substantially similar to them:

. . .

Flexible Benefits (“Cafeteria Plan”) provided in-kind

Flexible Benefits (“Cafeteria Plan”) paid in cash to the extent paid to members retiring on and after January 1, 1991”
7. Applicant began working for the Orange County Superior Court as a research attorney on August 13, 1992. He became a member of OCERS on October 14, 1994.
8. During his employment as a research attorney, Appellant participated in the Orange County Superior Court’s IRS 125 Plan that provided for flexible benefits, including the OBP program.

9. The Orange County Superior Court's IRS 125 Plan is applicable only if it is an elective plan under the IRS rules.
10. The Orange County Superior Court's Section 125 Plan provides that a "Participant" is any "Eligible Employee who elects to become a participant as provided in Section 2."
11. Section 2.2 of the Section 125 Plan, entitled "**Application to Participate**" states:

Any Eligible Employees **shall, during the applicable Open Enrollment Period,** complete and submit to the Administrator Enrollment Documentation. The election made pursuant to the Enrollment Documentation shall be irrevocable until the end of the applicable Contribution Period unless the Participant is entitled to change his or her elections pursuant to Section 4.6 hereof."

A Participant shall not continue participating in the Plan for subsequent Contribution Periods unless he or she completes and submits new Enrollment Documentation during each Open Enrollment Period.
12. The Orange County Superior Court's IRS 125 Plan's OBP program provided that the employer would "credit OBP Eligible Employees with a specific amount of OBP Dollars each Plan Year." The eligible employee can elect to allocate his OBP Dollars in the amount of \$3,500 to pay for certain benefits or to receive it as a taxable lump sum cash payment.
13. The Orange County Superior Court's IRS 125 Plan's OBP program in paragraph 1.21 provided that : "Health Care Reimbursement Account means the account established for a Participant pursuant to this Plan to which part of his or her Salary Redirection and/or OBP Dollars may be credited and from which all allowable Health Care Expenses may be reimbursed. Such Health Care Reimbursement Account is not a real account, but is established and maintained for bookkeeping purposes only."
14. The 2011 and 2013 Orange County Superior Court Personnel Policies and Regulations provided that "[a]ny portion of the optional benefit not incurred within the plan period shall remain the Court or County funds."
15. The 2011 and 2013 Orange County Superior Court Personnel Policies and Regulations provided that "[t]he amount in a Participant's Health Care Reimbursement Account as of the end of any Contribution Period (and after the processing of all claims for each Contributions Period pursuant to Section 8 hereof) shall be forfeited to the Employer and deposited into the Employer's benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason."

16. On January 27, 2014, Applicant filed his application for retirement with OCERS, with a retirement date of February 21, 2014.
17. Upon receipt of Applicant's retirement application, OCERS calculated his retirement allowance based on the following statutory formula: Final Compensation X /Years of Service X Retirement Formula (Plan J/2.7% @ 55/§31676.19).
18. Pursuant to Government Code section 31462, subd. (a), the Applicant's three year measuring period for the purpose of calculating his retirement allowance is February 7, 2011 to February 6, 2014.
19. During his measuring period, i.e., February 7, 2011 to February 6, 2014, the Applicant elected to allocate his OBP Dollars to a Health Care Reimbursement Account and to taxable lump sum cash payments.
20. During his measuring period, i.e., February 7, 2011 to February 6, 2014, Applicant elected to allocate a portion of the \$3,500.00 OBP Dollars to the non-taxable Health Care Reimbursement Account in the following amounts: \$2,500.00 in 2011, \$700.00 in 2012, \$2,500.00 in 2013, and \$1,100.00 in early 2014.
21. The Applicant provided evidence of his elected allocation of his OBP Dollars during his measuring period, but he failed to submit evidence to establish that he actually received any reimbursement from the Health Care Reimbursement Account. He also failed to present evidence of the date(s) and amount(s) of any alleged reimbursements during the relevant measuring period. Thus, he has failed to establish that the OBP Dollars he allocated to the Health Care Reimbursement Account were not forfeited.
22. During his measuring period, i.e., February 7, 2011 to February 6, 2014, Applicant elected to allocate a portion of the \$3,500.00 OBP Dollars to a taxable lump sum payment in the following amounts: \$1,000.00 in 2011, \$2,800.00 in 2012, \$1,000.00 in 2013, and \$2,400.00 in 2014.
23. Applicant did not pay any employee contributions to fund the cost of paying for that portion of his retirement allowance that would be derived from receipt of his claimed OBP benefits.
24. Upon the Applicant's retirement on February 21, 2014, OCERS' staff excluded the OBP benefits received by the Applicant from compensation and compensation earnable when calculating his retirement allowance.
25. The OCERS staff properly excluded Applicant's OBP benefits under the CERL at the time of his retirement and properly applied the OCERS Board's Resolution 98-001 in its calculation of the Applicant's retirement allowance.
26. To the extent any of the foregoing Findings of Fact are Conclusions of Law, the Board so concludes.

**VII. CONCLUSIONS OF LAW**

1. The Orange County Board of Supervisor's Resolution 90-1551 made CERL section 31460.1 operative as a carve-out effective in Orange County as of January 1, 1991, thereby excluding from "compensation" payments made by an employer to an employee or on behalf of an employee, for that employee's participation in a flexible benefit plan, such as the OBP.
2. The savings clause in SB 193 is part of the CERL, and was and continues to be valid and enforceable.
3. In including the saving clause in SB 193, the Legislature intended to preserve Section 31460.1 in counties where the Board of Supervisors adopted that carve-out by resolution adopted by a majority vote.
4. Pursuant to SB 193's saving clause, the Orange County Board of Supervisor's Resolution 90-1551, as action taken by the county prior to May 11, 1992, remains valid and continues the validity of Section 31460.1 currently in the County of Orange.
5. By adopting Section 31460.1 by Resolution 90-1551, the County precluded the OCERS Board from including flexible benefit payments such as OBP benefits in a member's compensation, compensation earnable and final average salary.
6. The Applicant elected to participate in the OBP program by allocating the \$ 3,500 OBP Dollars to the Health Care Reimbursement Account and to lump sum taxable cash payments each year during his measuring period, i.e., between February 7, 2011 and February 6, 2014.
7. OCERS' staff's exclusion of OBP benefits (both for health and dental reimbursements and taxable cash payments within the three year measuring period) from the Applicant's compensation and compensation earnable complied with the CERL at the time the Applicant retired in 2014, according to Section 31460.1, the County's Resolution 90-1551, SB 193's savings clause, and the Board's Resolution 98-001 (which is based in part on County's Resolution 90-1551), notwithstanding the 2002 Settlement Agreement.
8. Since the Applicant received the \$1,000 taxable lump sum payment on January 7, 2011, outside the three year measuring period between February 7, 2011 and February 6, 2014, this amount cannot be included in calculating his final compensation.
9. To the extent any of the foregoing Conclusions of Law are Findings of Fact, the Board so finds.

**VIII. DECISION**

The Application of James B. Morell for a recalculated retirement allowance is DENIED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Frank Eley, Chair of the Board of Retirement



# Exhibit D

BEFORE THE BOARD OF RETIREMENT OF  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

**PETITIONER’S OBJECTIONS TO OCERS STAFF’S PROPOSED FINDINGS  
OF FACT, CONCLUSIONS OF LAW AND DECISION, AND SUGGESTED  
CHANGES**

**In the Remanded Matter of the Application of James B. Morell,  
A Member of the Orange County Employees System  
For a Recalculated Retirement Allowance**

Pursuant to the Board’s directive of December 13, 2021, Petitioner submits the following objections and suggested changes to the Proposed Findings of Facts [*sic*], Conclusions of Law and Decision submitted by OCERS staff counsel on December 21.

Preliminarily, Petitioner has identified a couple of minor inaccuracies in the document prepared by OCERS staff counsel which should be corrected:

- At the end of the fourth full paragraph on page 3, “2217 Bates documents.” should be replaced with “2217 pages of Bates documents.”
- At the end of Paragraph 8 on page 5, “benefits, including the OBP program.” should be replaced with “benefits under the OBP program.”

Petitioner objects to the entirety of the “ISSUE” paragraph enumerated as section IV on page 4, on the ground that the Board appears to be again seeking to avoid addressing the entirety of Petitioner’s contentions, albeit implicitly now rather than explicitly as it did in 2018. The writ issued by the Superior Court directs the Board “decide Petitioner’s contentions” (plural), not to recast those contentions into a single issue more to the Board’s liking. As set forth in his briefs, Petitioner’s three principal contentions are as

1 follows (Petitioner suggests this language be utilized in lieu of existing section IV):

2 1. The OBP benefits paid to Petitioner were “paid in cash” under Government Code  
section 31460, as defined in the 1997 Ventura decision.

3 2. The Board’s reliance on the “carve-out” created by former Government Code section  
4 31460.1 is misplaced, because that statute was repealed without reenactment in 1992 and  
5 the saving clause of the repealing act did not maintain section 31460.1 in operative effect  
prospectively in counties which had implemented it.

6 3. Even if still operative, the “carve-out” provided by former section 31460.1 is  
7 inapplicable because the evidence establishes that Petitioner did not “elect[] to participate  
in a flexible benefits program,” as required by the statute.

8 The Proposed Findings of Facts [*sic*], Conclusions of Law and Decision contains no  
9 findings or conclusions with regard to the first of these issues. Petitioner objects to the  
10 omission and would regard the lack of such findings and conclusions as ground for a  
motion in Superior Court to enforce full compliance with the writ.

11  
12 Petitioner objects to the lack of findings on the following material questions:

- 13 ■ Whether, under sections 3.6 and 8.1 of the County’s Section 125 Plan, reimbursement  
payments are paid directly to the Participant from the County’s general assets.
- 14 ■ Whether “county” in Section 2 of SB 193 has the same meaning as “county” in  
15 subsections (7) and (8) of section 3.
- 16 ■ Whether “county” in Section 2 of SB 193 includes OCERS as a county agency.
- 17 ■ Whether the Board, in adopting Resolution 98-001 in early 1998 following the  
18 Ventura decision, considered whether employees had elected to participate in the  
OBP program.
- 19 ■ Whether, under Section 1.18 of the County’s Section 125 Plan, a Superior Court  
20 attorney may only elect the *type* of benefits to which “OBP dollars” may be allocated  
21 during annual Open Enrollment.

1 ■ Whether Sections 4.3 and 4.7 of the County’s Section 125 Plan provide for payment  
2 of the full annual OBP benefit (“OBP dollars”) where no election is made under  
section 2.2 of the Plan.

3 ■ Whether Petitioner was a member of any employee association or bargaining group.  
4

5  
6 Petitioner also objects to the following proposed factual findings, which are being  
7 asserted now for the first time and which have no evidentiary support whatsoever in the  
record upon which the Board is supposed to be basing its decision:

8 ■ The second sentence of Paragraph 3 on page 5.

9 ■ Paragraph 9 on page 6. (In addition, the sentence is ambiguous, if not unintelligible –  
it is unclear what is meant by “applicable,” “elective plan” or “the IRS rules”.)

10 ■ The portion of Paragraph 21 on page 7 which states that Petitioner “failed to submit  
11 evidence to establish that he actually received any reimbursement from the Health  
12 Care Reimbursement Account.” (Petitioner testified that he received the full \$3,500  
13 OBP benefit as a payroll cash and cash reimbursement payments in each year during  
14 2011-2024 (AR 956:7-957:10) -- such oral testimony based upon personal knowledge  
constitutes direct evidence sufficient to establish the fact of Petitioner’s receipt of the  
payments.)

15 ■ Paragraph 23 on page 7.  
16

17 For what it’s worth, Petitioner further objects to the following proposed findings and  
18 conclusions, for the reasons stated in Petitioner’s briefs:

19 ■ Paragraph 25 on page 7.

20 ■ Paragraphs 3 and 4 on page 8, insofar as they fail to specify whether the preservation  
and validity (respectively) is prospective as well as retrospective.  
21

1 ■ Paragraphs 6 and 7 on page 8.

2  
3  
4 Respectfully submitted,

5  
6   
7 James B. Morell, Petitioner

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**PROOF OF ELECTRONIC SERVICE**

I am over 18 years of age and a resident of Los Angeles County.

My residence address is 222 Avenue G, Redondo Beach, CA 90277.

My electronic service address is jmorell@aol.com

On the date set forth below I served the foregoing PETITIONER'S OBJECTIONS TO OCERS STAFF'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION, AND SUGGESTED CHANGES on the following persons at their email addresses of record:

William Singleton                      wsingleton@ocers.org

Dawn Marie Matsuo                      dmatsuo@ocers.org

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on January 4, 2022, at Redondo Beach, County of Los Angeles, California,

  
James B. Morell, Petitioner

# Exhibit E



# VALERIE DESBOROUGH COURT REPORTERS

**Writing Verbatim is the Key**

BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

IN THE MATTER OF THE APPLICATION )  
FOR RETIREMENT OF: )  
 )  
JAMES B. MORELL, )  
 )  
 )  
 )  
APPLICANT. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS TAKEN  
THROUGH ZOOM VIDEO COMMUNICATIONS  
OCEANSIDE, CALIFORNIA  
MONDAY, DECEMBER 13, 2021

## CONDENSED

REPORTED BY:  
VALERIE DESBOROUGH CSR NO. 12317  
JOB NO. OC121321

(714) 401-0254  
*WritingVerbatim@yahoo.com*



1 BEFORE THE BOARD OF RETIREMENT OF THE  
2 ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
3  
4  
5  
6 IN THE MATTER OF THE APPLICATION )  
FOR RETIREMENT OF: )  
7 JAMES B. MORELL, )  
8 )  
9 APPLICANT. )  
----- )  
10  
11  
12  
13  
14  
15  
16 TRANSCRIPT OF PROCEEDINGS TAKEN THROUGH  
17 ZOOM VIDEO COMMUNICATIONS, BEGINNING AT 9:57 A.M.  
18 AND ENDING AT 11:40 A.M. ON MONDAY, DECEMBER 13,  
19 2021, TAKEN BEFORE VALERIE DESBOROUGH,  
20 CERTIFIED SHORTHAND REPORTER NO. 12317.  
21  
22  
23  
24  
25

2

1 SANTA ANA, CALIFORNIA, MONDAY, DECEMBER 13, 2021  
2 9:57 A.M. - 11:40 A.M.  
3  
4  
5 CHAIRMAN DEWANE: THAT LEADS US TO ITEM D-A-2,  
6 DISABILITY APPEAL NUMBER 2. AND THIS IS A MEMBER WHO IS  
7 APPEALING HIS OCERS' CALCULATIONS RETIREMENT BENEFIT.  
8 THE BOARD WAS PROVIDED WITH A LARGE VOLUME OF  
9 MATERIAL INCLUDING ALMOST 3,000 PAGES.  
10 TODAY WE ARE GOING TO HEAR FROM OUR MEMBER,  
11 JAMES MORELL, AND FROM THE OCERS STAFF ATTORNEY DAWN  
12 MATSUO. MR. MORELL IS REPRESENTING HIMSELF. AND I  
13 UNDERSTAND THAT HE IS AN ATTORNEY.  
14 BEFORE WE HEAR FROM MR. MORELL AND MS. MATSUO,  
15 I AM GOING TO TURN IT OVER TO GENERAL COUNSEL, GINA  
16 RATTO, TO EXPLAIN THE PROCEDURAL BACKGROUND OF THE CASE  
17 AND WHAT WE NEED TO DO TODAY.  
18 MR. ELEY HAS HIS HAND UP BEFORE WE GO TO GINA.  
19 BOARD MEMBER ELEY: I JUST WANTED TO ASK REAL  
20 QUICKLY, DO WE HAVE TO DO NUMBER 1 BEFORE WE DELVE INTO  
21 THIS, MS. RATTO, TO SET ASIDE THE PRIOR DECISION SO THAT  
22 WE START TO HEAR WHAT YOU ARE SAYING, OR IS THAT NOT  
23 A -- I JUST WANT TO KNOW IF THE PROCEDURE IS CORRECT.  
24 GENERAL COUNSEL RATTO: I FEEL THAT MY  
25 INTENTION IS TO WALK YOU --

4

1 APPEARANCES:  
2 BOARD OF RETIREMENT MEMBERS  
3 SHAWN DEWANE FRANK ELEY  
4 SHARI L. FREIDENRICH ARTHUR HIDALGO  
5 WAYNE S. LINDHOLM RICHARD OATES  
6 CHARLES E. PACKARD CHRIS PREVATT  
7 ADELE TAGALOA  
8  
9 FOR APPLICANT JAMES B. MORELL:  
10 BY: JAMES B. MORELL  
11 IN PROPRIA PERSONA  
12 222 AVENUE G  
13 REDONDO BEACH, CALIFORNIA 90277  
14 JMORELL@aol.com  
15  
16 FOR RESPONDENT OCERS:  
17 BY: DAWN MATSUO  
18 ATTORNEY AT LAW  
19 2223 EAST WELLINGTON AVENUE  
20 SANTA ANA, CALIFORNIA 92701  
21 (714) 558-6200  
22 DMATSUO@OCERS.ORG  
23  
24 ALSO PRESENT:  
25 STEVE DELANEY - OCERS CHIEF EXECUTIVE OFFICER  
GINA RATTO - GENERAL COUNSEL  
WILLIAM SINGLETON - PARALEGAL  
HARVEY LEIDERMAN - FIDUCIARY COUNSEL  
BRITTANY CLEBERG - RECORDING SECRETARY  
BRENDA SHOTT - OCERS ASSISTANT CEO INTERNAL OPERATIONS  
CLAUDIA PEREZ - EXECUTIVE ASSISTANT, OCERS  
CYNTHIA HOCKLESS - DIRECTOR OF HUMAN RESOURCES, OCERS  
DAVID KIM - DIRECTOR OF INTERNAL AUDIT, OCERS  
DAVID ACUNA - DISABILITY INVESTIGATOR, OCERS  
ANTHONY BELTRAN - NETWORK ENGINEER II, OCERS  
MARK AVIENTO - INTERNAL AUDIT MEETING  
JEFF LAMBERSON - DIRECTOR OF MEMBER SERVICES  
L.L. ROBINSON - VICE-PRESIDENT REAOC  
I.T. OPERATIONS REPRESENTATIVE

3

1 CHAIRMAN DEWANE: YOU'RE MUTED NOW. YOU JUST  
2 WENT ON MUTE, GINA.  
3 GENERAL COUNSEL RATTO: SORRY. MY INTENTION  
4 IS TO WALK YOU THROUGH THE PROCEDURE INCLUDING THE NEED  
5 FOR THAT FIRST MOTION. SO IF YOU WILL JUST BEAR WITH ME  
6 FOR A FEW MINUTES, I'LL PROCEED.  
7 SO AS STATED BY CHAIRMAN DEWANE, THIS MATTER  
8 IS AN APPEAL BY AN OCERS' MEMBER, JAMES MORELL,  
9 CHALLENGING THE WAY THAT OCERS CALCULATED HIS RETIREMENT  
10 ALLOWANCE.  
11 MR. MORELL CONTENDS THAT OCERS IMPROPERLY  
12 EXCLUDED HIS FLEXIBLY BENEFIT PAYMENTS, ALSO REFERRED TO  
13 AS OPTIONAL BENEFIT PLAN PAYMENTS OR OBP PAYMENTS, FROM  
14 HIS FINAL COMPENSATION WHEN CALCULATING HIS RETIREMENT  
15 ALLOWANCE.  
16 WHAT BRINGS US HERE TODAY IS THAT MR. MORELL  
17 CHALLENGED OCERS' EXCLUSION OF THE OBP PAYMENTS BY  
18 FILING A WRIT PETITION IN STATE COURT. AND THE STATE  
19 COURT ISSUED A WRIT REMANDING THE CASE BACK TO THE OCERS  
20 BOARD WITH INSTRUCTIONS.  
21 SO WE ARE GOING TO NEED TWO ACTIONS FROM THE  
22 BOARD TODAY IN ORDER TO SATISFY THE STATE COURT WRIT.  
23 FIRST, WE ARE GOING TO NEED THE BOARD TO SET  
24 ASIDE ITS PRIOR DECISION IN THIS MATTER DATED OCTOBER  
25 18, 2018.

5

1 AND THEN THE BOARD MUST RECONSIDER THE  
2 MEMBER'S CONTENTION THAT OCERS IMPROPERLY EXCLUDED OBP  
3 PAYMENTS FROM HIS FINAL COMPENSATION SEPARATE AND APART  
4 FROM THE SETTLEMENT AGREEMENT THAT WAS ENTERED INTO IN  
5 2002 IN A CLASS ACTION CASE CALLED IN RE: RETIREMENT  
6 CASES.

7 THE BOARD FIRST CONSIDERED THIS MATTER IN  
8 AUGUST 2018. THAT'S FROM WHERE THE -- THE DECISION CAME  
9 DATED OCTOBER 18, 2018, WHICH THE COURT INSTRUCTED THE  
10 BOARD TO SET ASIDE TODAY.

11 WHEN THE BOARD CONSIDERED THE CASE IN 2018,  
12 THE BOARD LIMITED ITS REVIEW TO ONLY TWO QUESTIONS.  
13 FIRST, WHETHER OCERS AND THE MEMBER WERE BOUND BY THE  
14 2002 COURT-APPROVED SETTLEMENT AGREEMENT IN THE IN RE:  
15 RETIREMENT CASES; AND, SECOND, WHETHER OCERS' STAFF HAD  
16 CALCULATED THE MEMBER'S BENEFIT IN ACCORDANCE WITH THAT  
17 2002 SETTLEMENT AGREEMENT.

18 THE BOARD ANSWERED BOTH OF THE QUESTIONS IN  
19 THE AFFIRMATIVE, FINDING THAT THE SETTLEMENT AGREEMENT  
20 ALONE WAS DISPOSITIVE ON THE ISSUE OF WHETHER THE  
21 EXCLUSION OF OBP PAYMENTS WAS CORRECT.

22 AS I MENTIONED, THE MEMBER THEN FILED A  
23 PETITION FOR WRIT OF MANDATE IN THE STATE COURT  
24 CHALLENGING THE BOARD'S DECISION ISSUED IN OCTOBER OF  
25 2018.

6

1 THE STATE COURT ISSUED A WRIT IN THIS CASE  
2 WITH INSTRUCTIONS TO THE OCERS BOARD BECAUSE THE COURT  
3 WANTED TO SEE MORE ANALYSIS BY THE OCERS BOARD THAN JUST  
4 THE ANALYSIS OF THE PENSIONABILITY OF OBP PAYMENTS UNDER  
5 THAT 2002 SETTLEMENT AGREEMENT.

6 THE COURT REMANDED THE CASE TO THE OCERS  
7 BOARD, INSTRUCTING THE BOARD TO SET ASIDE ITS DECISION  
8 DATED OCTOBER 18, 2018, AND TO RECONSIDER THE MEMBER'S  
9 CONTENTIONS THAT OCERS IMPROPERLY EXCLUDED OBP PAYMENTS  
10 FROM THE CALCULATION OF HIS FINAL COMPENSATION WITHOUT  
11 REGARD TO THE 2002 SETTLEMENT AGREEMENT.

12 THE COURT SPECIFICALLY INSTRUCTED THE BOARD TO  
13 NOT LIMIT ITS CONSIDERATION TO WHETHER OCERS AND THE  
14 MEMBER WERE BOUND BY THE 2002 SETTLEMENT AGREEMENT AND  
15 WHETHER THE MEMBER'S RETIREMENT ALLOWANCE HAD BEEN  
16 CALCULATED IN ACCORDANCE WITH THE SETTLEMENT AGREEMENT.

17 INSTEAD, TODAY THE BOARD MUST DECIDE,  
18 ADDITIONALLY, WHETHER THE EXCLUSION OF THE OBP PAYMENTS  
19 FROM MR. MORELL'S FINAL COMPENSATION WAS VALID UNDER THE  
20 CERL AND RELATED LAWS AT THE TIME MR. MORELL RETIRED IN  
21 2014.

22 THIS DOESN'T MEAN THAT OCERS IS CONCEDED  
23 ANYTHING WITH REGARD TO THE 2002 SETTLEMENT AGREEMENT.  
24 WE CONTINUE TO CONTEND THAT THE 2002 SETTLEMENT  
25 AGREEMENT IS CONSISTENT WITH THE LAW AND CONTINUES TO

7

1 APPLY TO MR. MORELL.

2 BUT FOR PURPOSES OF THE WRIT PROCEEDING, THE  
3 BOARD IS INSTRUCTED BY THE COURT TO SET ASIDE ITS  
4 DECISION IN 2018 WHICH WAS BASED ON THE SETTLEMENT  
5 AGREEMENT AND TO EXAMINE MR. MORELL'S CONTENTIONS  
6 SEPARATE AND APART FROM THE SETTLEMENT AGREEMENT.

7 SO TO PUT IT SIMPLY, THE QUESTION FOR TODAY IS  
8 WHETHER THE OBP PAYMENTS SHOULD HAVE BEEN INCLUDED IN  
9 THE CALCULATION OF THE MEMBER'S FINAL COMPENSATION UNDER  
10 THE LAW IN EFFECT WHEN THE MEMBER RETIRED IN 2014.

11 BUT FIRST, WE NEED A MOTION BY THE BOARD TO  
12 SET ASIDE ITS DECISION DATED OCTOBER 2018 AND REOPEN  
13 THIS MATTER.

14 SO I WOULD ASK THAT THE CHAIR PLEASE CALL FOR  
15 THE QUESTION.

16 CHAIRMAN DEWANE: THANK YOU VERY MUCH FOR  
17 THAT.

18 ARE THERE ANY QUESTIONS AT THIS POINT?  
19 OKAY. SEEING NONE, IS THERE A MOTION?  
20 BOARD MEMEBRE ELEY: SO MOVED, MR. CHAIR.  
21 NUMBER 1, SET ASIDE ITS PRIOR ADMINISTRATIVE  
22 DECISION AS OF OCTOBER 18, 2018, IN THIS MATTER.  
23 BOARD MEMBER PREVATT: SECOND.  
24 BOARD MEMBER PACKARD: SECOND.  
25 BOARD MEMBER TAGALOA: SECOND THE MOTION.

8

1 BOARD MEMBER PREVATT: OH, GOD.  
2 CHAIRMAN DEWANE: WHAT'S THAT?  
3 BOARD MEMBER TAGALOA: I THINK WE SPOKE AT THE  
4 SAME TIME, MR. PREVATT.  
5 BOARD MEMBER PREVATT: AND I THINK  
6 MR. PACKARD, TOO.  
7 ANYWAY, I'LL YIELD TO ADELE.  
8 CHAIRMAN DEWANE: ADELE HAS --  
9 BOARD MEMBER PACKARD: I YIELD TO ADELE.  
10 CHAIRMAN DEWANE: VERY GOOD.  
11 ADELE, YOU ARE THE SECOND.  
12 OKAY. SO IS THERE ANY DISCUSSION AT THIS  
13 POINT?  
14 SEEING NONE, WOULD YOU PLEASE CALL THE ROLL?  
15 RECORDING SECRETARY CLEBERG: MS. TAGALOA?  
16 BOARD MEMBER TAGALOA: YES.  
17 RECORDING SECRETARY CLEBERG: MR. LINDHOLM?  
18 BOARD MEMBER LINDHOLM: YES.  
19 RECORDING SECRETARY CLEBERG: MR. PREVATT?  
20 BOARD MEMBER PREVATT: YES.  
21 RECORDING SECRETARY CLEBERG: MR. HIDALGO?  
22 BOARD MEMBER HIDALGO: YES.  
23 RECORDING SECRETARY CLEBERG: MR. OATES?  
24 BOARD MEMBER OATES: YES.  
25 RECORDING SECRETARY CLEBERG: MS. FREIDENRICH?

9

1 BOARD MEMBER FREIDENRICH: AYE.  
2 RECORDING SECRETARY CLEBERG: MR. ELEY?  
3 BOARD MEMBER ELEY: YES.  
4 RECORDING SECRETARY CLEBERG: MR. PACKARD?  
5 BOARD MEMBER PACKARD: YES.  
6 RECORDING SECRETARY CLEBERG: CHAIR DEWANE?  
7 CHAIRMAN DEWANE: YES.  
8 OKAY. GINA, I'M JUST GOING TO GO BACK TO YOU  
9 NOW.  
10 DO WE DO SOMETHING WITH NUMBER 2 HERE, THE  
11 RECONSIDERATION?  
12 GENERAL COUNSEL RATTO: YES. THANK YOU.  
13 SO THE BOARD MUST NOW TURN TO THE QUESTION OF  
14 WHETHER THE EXCLUSION OF OPTIONAL PLAN PAYMENTS FOR  
15 MR. MORELL'S FINAL COMPENSATION WAS VALID UNDER THE CERL  
16 AND RELATED LAWS AS THE LAWS EXISTED AT THE TIME  
17 MR. MORELL RETIRED IN 2014 WITHOUT REGARD TO THE 20 --  
18 TO THE 2002 SETTLEMENT AGREEMENT.  
19 BEFORE WE HEAR ORAL ARGUMENT FROM MR. MORELL  
20 AND MS. MATSUI, I WANT TO STATE FOR THE RECORD THAT WE  
21 HAVE A COURT REPORTER IN ATTENDANCE WHO IS TRANSCRIBING  
22 THIS MATTER.  
23 SO IT WILL BE EVEN MORE IMPORTANT THAN USUAL  
24 THAT THE BOARD MEMBERS AND THE PARTIES NOT INTERRUPT  
25 EACH OTHER DURING THE PROCEEDINGS SO THAT THE COURT

1 0

1 REPORTER CAN TELL WHO IS SPEAKING.  
2 IT WOULD BE MOST HELPFUL IF EVERYONE WOULD  
3 PLEASE USE THE RAISE-YOUR-HAND FEATURE IN ZOOM AND WAIT  
4 TO BE RECOGNIZED BY THE CHAIR BEFORE SPEAKING.  
5 IN ADDITION, AGAIN FOR THE RECORD, I WANT TO  
6 CONFIRM THAT ON NOVEMBER 19TH, THE BOARD WAS PROVIDED A  
7 COPY OF THE ADMINISTRATIVE RECORD IN THIS CASE, THE  
8 OPENING AND RESPONSIVE BRIEFS OF BOTH MR. MORELL AND  
9 OCERS, AND DECLARATIONS AND EXHIBITS FROM BOTH PARTIES,  
10 ALMOST 3,000 PAGES OF RECORDS.  
11 THE PARTIES' BRIEFS, DECLARATIONS, AND  
12 EXHIBITS CAN BE FOUND IN THE DILIGENT MATERIALS STARTING  
13 AT PAGE 341. THE ADMINISTRATIVE RECORD STARTS AT PAGE  
14 973 OF THE DILIGENT MATERIALS.  
15 I JUST WANT TO POINT OUT THAT THIS WILL BE A  
16 LITTLE UNFAMILIAR TO THE BOARD. THE PAGES OF THE  
17 ADMINISTRATIVE RECORD CARRIES SEPARATE PAGE NUMBERING.  
18 THESE ARE THE BATES STAMPS, BATES STAMPED NUMBERS, PAGE  
19 NUMBERS THAT ARE ON THE DOCUMENTS THAT WERE USED AT THE  
20 ADMINISTRATIVE HEARING AND ALSO AT THE WRIT PROCEEDINGS.  
21 THOSE NUMBERS APPEAR AS JAMES MORELL, ALL IN  
22 CAPS, JAMES MORELL 0001 THROUGH JAMES MORELL 2217.  
23 THOSE ARE THE PAGE NUMBERS -- THE SEPARATE PAGE NUMBERS  
24 OF THE ADMINISTRATIVE RECORD.  
25 THE REASON WHY I'M MAKING A POINT OF THIS IS

1 1

1 THAT SINCE MR. MORELL DOES NOT HAVE ACCESS TO DILIGENT,  
2 HE MAY AT TIMES MAKE REFERENCE TO PAGES OF THE  
3 ADMINISTRATIVE RECORD, IN WHICH CASE HE IS REFERRING TO  
4 THE SEPARATE BATES STAMPED PAGE NUMBERS.  
5 SO A LITTLE BIT CONFUSING, BUT WE ARE ALL HERE  
6 TO HELP THE BOARD UNDERSTAND WHAT WE ALL ARE TALKING  
7 ABOUT IN HOW TO NAVIGATE THROUGH THESE -- THIS VERY  
8 LARGE ADMINISTRATIVE RECORD.  
9 THE PARTIES WILL NOW PRESENT THEIR ORAL  
10 ARGUMENTS TO THE BOARD. AS THE APPLICANT, MR. MORELL  
11 WILL GO FIRST. HE WILL HAVE 20 MINUTES.  
12 OCERS' STAFF ATTORNEY DAWN MATSUI WILL THEN  
13 PRESENT OCERS' ARGUMENT. AND SHE WILL ALSO HAVE 20  
14 MINUTES.  
15 THE BOARD IS FREE TO ASK QUESTIONS DURING THE  
16 PRESENTATIONS OR HOLD THE QUESTIONS UNTIL THE END.  
17 IF THERE ARE NO PROCEDURAL QUESTIONS FROM THE  
18 BOARD, WE'LL TURN IT OVER TO MR. MORELL.  
19 CHAIRMAN DEWANE: THANK YOU.  
20 IS THERE -- ARE THERE ANY QUESTIONS, COMMENTS,  
21 OR CONCERNS FROM ANY MEMBER OF THE BOARD?  
22 THANK YOU VERY MUCH.  
23 MR. MORELL, WELCOME. AND COULD YOU JUST  
24 CONFIRM FOR THE RECORD THAT YOU'RE REPRESENTING YOURSELF  
25 AND THAT YOU ARE AN ATTORNEY?

1 2

1 MR. MORELL: THAT IS TRUE. YES, I AM JAMES  
2 MORELL, REPRESENTING MYSELF. I AM AN ATTORNEY, INACTIVE  
3 AND RETIRED.  
4 CHAIRMAN DEWANE: OKAY. GREAT.  
5 MR. MORELL, YOU HAVE 20 MINUTES AND YOU'VE GOT  
6 THE FLOOR AND THE FULL ATTENTION OF THE BOARD OF  
7 DIRECTORS OR THE BOARD OF TRUSTEES HERE.  
8 MR. MORELL: OKAY. THANK YOU.  
9 FIRST OF ALL, I HAVE TO ADDRESS SOME OF THE  
10 THINGS MS. RATTO JUST SAID. YOU KNOW, I -- WELL, FIRST  
11 OF ALL, AND CORRECT A COUPLE THINGS.  
12 THIS -- THE BOARD FIRST HEARD THIS MATTER IN  
13 2015, NOT 2018. IT WAS SUBSEQUENTLY SENT TO A REFEREE.  
14 IT CAME BACK IN 2018.  
15 AND AT THAT POINT THE BOARD, ON ADVICE OF  
16 COUNSEL, DECIDED NOT TO -- NOT TO HEAR MY ENTIRE APPEAL,  
17 BUT ONLY TO RELY ON THE SETTLEMENT AGREEMENT.  
18 AND I OBJECTED AT THE TIME. SOME OF YOU WERE  
19 HERE. MAYBE HALF OF YOU ARE STILL HERE FROM THEN. BUT  
20 I ARGUED THAT THE BOARD SHOULD CONSIDER THE ENTIRE  
21 MATTER RATHER THAN BASICALLY ADJUDICATING MY APPEAL IN  
22 PIECEMEAL.  
23 THEY CHOSE TO DO WHAT THEY DID, I BELIEVE, ON  
24 ADVICE OF COUNSEL. AND SO THEY RELIED ON A SETTLEMENT  
25 AGREEMENT WHICH PURPORTED TO INCORPORATE RESOLUTION

1 3

1 98-001, WHICH WAS ADOPTED AFTER THE VENTURA DECISION.  
 2 AND THIS -- THIS SETTLEMENT AGREEMENT  
 3 PURPORTED TO INCORPORATE THE ENTIRETY OF RESOLUTION  
 4 98-001 AND TO PREVENT ANY CHALLENGES TO THE SETTLEMENT  
 5 AGREEMENT.  
 6 NOW, I LITIGATED THAT IN -- IN SUPERIOR COURT.  
 7 AND I WON. THE SETTLEMENT AGREEMENT IS NO LONGER AN  
 8 ISSUE. MS. RATTO CAN SAY UNTIL THE END OF TIME THAT  
 9 IT'S -- THAT YOU GUYS ARE RESERVING YOUR POSITION.  
 10 I THINK YOU ARE NOT WELL SERVED BY THAT. I  
 11 WOULD ENCOURAGE YOU TO GO TO THE SUPERIOR COURT WEBSITE,  
 12 PUT IN THE -- PUT IN THE CASE NUMBER.  
 13 WE DIDN'T INCLUDE ALL THE DOCUMENTS FROM THE  
 14 SUPERIOR COURT DECISION, INCLUDING THE MEMORAN -- THE  
 15 DECISIONS, I BELIEVE, WHERE THE OBJECTION SET IT ASIDE.  
 16 THE POINT IS YOU CAN GO READ THE -- THE  
 17 ALAMEDA CASE. READ WHAT IT SAYS. YOU CANNOT HAVE A  
 18 SETTLEMENT AGREEMENT WHICH CONFLICTS WITH THE CERL, THE  
 19 COUNTY EMPLOYEES RETIREMENT ACT OF 1937.  
 20 NOBODY CAN -- YOU CAN'T DO IT BY CONTRACT.  
 21 YOU CAN'T OPT OUT. NOBODY CAN. YOU CAN'T DO IT THROUGH  
 22 COLLECTIVE BARGAINING. YOU CAN'T DO IT THROUGH A  
 23 SETTLEMENT AGREEMENT.  
 24 THE CALIFORNIA SUPREME COURT WEIGHED IN ON  
 25 THAT. AND THEY DID THAT AFTER THE STATE OF CALIFORNIA

1 4

1 FILED AN INTERVENING BRIEF IN THE -- IN THE ALAMEDA CASE  
 2 ON THAT VERY POINT BECAUSE THEY WERE CONCERNED BECAUSE  
 3 NO -- ONLY THE STATE OF CALIFORNIA APPARENTLY HAS AN  
 4 INTEREST IN MAKING SURE THAT RETIREES GET WHAT THEY'RE  
 5 SUPPOSED TO GET UNDER THE STATUTE.  
 6 OTHER PARTIES HAVE AN INTEREST, A  
 7 SELF-INTEREST IN BARGAINING IT AWAY AND BASICALLY  
 8 CREATING THEIR OWN PARALLEL SYSTEMS OF LAW.  
 9 ALAMEDA SAYS YOU CAN'T DO THAT. OKAY? SO  
 10 THAT IS SETTLED.  
 11 MS. RATTO CAN -- YOU KNOW, I DON'T WANT TO BE  
 12 PERSONAL HERE, BUT I REALLY DON'T THINK OCERS HAS BEEN  
 13 WELL SERVED THROUGH THE YEARS BY COUNSELS' ADVICE, NOT  
 14 ONLY BY MS. RATTO, BUT FIDUCIARY COUNSEL, ALSO. I'LL  
 15 GET TO THAT.  
 16 SO ANYWAY, ALSO, ABOUT THE PACKAGE -- SORRY  
 17 FOR A PROCEDURAL THING HERE. SHE SAID THAT YOU SHOULD  
 18 HAVE THE OPENING BRIEFS. THAT IS TRUE.  
 19 THE MATERIALS I GOT, WHICH WERE HARD COPIES,  
 20 BECAUSE I COULDN'T -- I COULD NOT OPEN THE EMAIL  
 21 CONTAINING THE ELECTRONIC BRIEFS, THE ELECTRONIC PACKET  
 22 THAT YOU GUYS RECEIVED.  
 23 THE ONE I GOT OMITTED SEVERAL THINGS. IT  
 24 OMITTED EXHIBIT E TO MY DECLARATION, WHICH WAS A BRIEF  
 25 THAT I FILED IN THE SUPERIOR COURT, WHICH BASICALLY

1 5

1 CONTAINED A LOT OF MY LEGAL ARGUMENTS. IT ALSO OMITTED  
 2 THE REPLY AND RESPONSE BRIEFS THAT -- THAT BOTH STAFF  
 3 COUNSEL AND I FILED IN THIS CASE.  
 4 SO I HOPE THAT -- I WAS ASSURED OVER THE  
 5 WEEKEND THAT THOSE DOCUMENTS HAD BEEN INCLUDED IN THE  
 6 MATERIALS SENT TO YOU.  
 7 IF ANYBODY CAN CONFIRM THAT, THAT WOULD BE  
 8 GREAT.  
 9 BUT MS. RATTO JUST SPECIFICALLY MENTIONED THE  
 10 OPENING BRIEFS. SHE DIDN'T SAY THAT THE REPLIES -- THE  
 11 REPLY AND THE RESPONSE HAD BEEN INCLUDED, WHICH LEADS ME  
 12 TO BE CONCERNED, AGAIN, THAT YOU MAY NOT HAVE GOTTEN THE  
 13 ENTIRETY OF MATERIALS.  
 14 IF ANYBODY CAN CONFIRM THAT YOU'VE RECEIVED  
 15 THE REPLY AND RESPONSE, THAT WOULD BE GOOD TO KNOW.  
 16 CHAIRMAN DEWANE: MS. RATTO.  
 17 GENERAL COUNSEL RATTO: YES. I BELIEVE I  
 18 STATED THAT THE OPENING AND THE RESPONSIVE BRIEFS OF  
 19 BOTH MR. MORELL AND OCERS, THE DECLARATIONS AND EXHIBITS  
 20 FROM BOTH PARTIES HAVE BEEN INCLUDED IN THE RECORD.  
 21 I PERSONALLY CHECKED. AFTER YOU SENT YOUR  
 22 EMAIL, MR. MORELL, OVER THE WEEKEND, I PERSONALLY WENT  
 23 BACK AND CHECKED DILIGENT AGAIN AND CONFIRMED THAT ALL  
 24 OF THOSE MATERIALS WERE INCLUDED IN THE DILIGENT  
 25 MATERIALS.

1 6

1 OUR PARALEGAL, BILL SINGLETON, INDEPENDENTLY  
 2 ALSO CHECKED AND CONFIRMED THAT ALL OF THOSE MATERIALS  
 3 ARE THERE.  
 4 MR. SINGLETON ALSO WAS IN THE OFFICE THIS  
 5 MORNING. AND HE BELIEVES THAT HE SENT YOU THE HARD  
 6 COPIES OF ALL OF THOSE DOCUMENTS.  
 7 YOU INDICATED IN YOUR EMAIL ON SATURDAY THAT  
 8 YOU HAD THE DOCUMENTS INDEPENDENTLY OF WHAT  
 9 MR. SINGLETON SENT TO YOU, AND THAT YOU HAD NO PROBLEM  
 10 WITH PROCEEDING THIS MORNING PROVIDED THAT THE BOARD  
 11 RECEIVE ALL OF THE MATERIALS.  
 12 AND I AM ASSURING YOU THAT THE BOARD HAS  
 13 RECEIVED ALL OF THE MATERIALS.  
 14 MR. MORELL: OKAY. I APPRECIATE THAT. I'M A  
 15 LITTLE CONCERNED THAT NOBODY POPPED UP AND SAID, YES, I  
 16 HAVE THAT. I'VE READ THAT. SO I'M NOT SURE.  
 17 WELL, ANYWAY, YOU KNOW, ONE THING I DO WANT TO  
 18 SAY, THERE'S A LOT OF MATERIALS HERE, AND I -- A LOT OF  
 19 IT IS LEGAL, LEGAL MATTERS. THESE ARE LEGAL ISSUES.  
 20 AND IN SOME RESPECTS YOU GUYS ARE THE JUDGES  
 21 HERE, WHICH -- WHICH PROBABLY MAKES YOU FEEL A LITTLE  
 22 BIT UNCOMFORTABLE.  
 23 AND YOU CERTAINLY HAVE AN INCLINATION TO RELY  
 24 ON THE ADVICE OF -- OF STAFF COUNSEL, WHO YOU GENERALLY  
 25 DO RELY ON AND PROPERLY SO.

1 7

1 FRANKLY, I'M HERE TO TELL YOU THAT IN THIS  
2 PARTICULAR MATTER, YOU ARE NOT BEING WELL SERVED BY  
3 THEIR ADVICE. AND UNFORTUNATELY, THAT'S -- THAT'S  
4 BASICALLY THE -- THE UPHILL BATTLE THAT I HAVE HERE.

5 FRANKLY, I DID THIS KIND OF WORK FOR MORE THAN  
6 20 YEARS IN THE COURT. AND, FRANKLY, I HAVE NO -- I  
7 MEAN, YES. THERE'S SOME MONETARY ISSUES INVOLVED HERE.  
8 BUT I'M -- I'M PURSUING THIS BECAUSE I THINK THIS IS --  
9 THIS IS WHAT'S RIGHT.

10 THIS IS NOT A HUGE AMOUNT OF MONEY INVOLVED  
11 FOR ME. BUT, YOU KNOW, I -- I --

12 CHAIRMAN DEWANE: MR. --

13 MR. MORELL: -- FOR SOME REASON --

14 YEAH. I'M SORRY. GO AHEAD.

15 CHAIRMAN DEWANE: MR. MORELL, YOU KNOW, I'M  
16 JUST GOING TO RESPECTFULLY MAKE A SUGGESTION THAT YOU --  
17 YOU, YOU KNOW, CONTAIN YOUR REMARKS TO THOSE ITEMS THAT  
18 YOU THINK WOULD BE PERSUASIVE TO THE BOARD AS TO WHY THE  
19 DECISION WAS MADE INCORRECTLY, WHY WE SHOULD RECONSIDER  
20 IT.

21 WE HAVE ALLOTTED ONE HOUR FOR THIS DISCUSSION.  
22 20 MINUTES FOR QUESTIONS OF THE BOARD MEMBERS, 20  
23 MINUTES FOR MS. MATSUO TO RESPOND TO YOUR REMARKS, AND  
24 20 MINUTES FOR YOU.

25 SO WE ARE NOW 14 MINUTES INTO THIS -- OR 16

1 8

1 APPEAL CASE IN AROUND 1994, I BELIEVE IT WAS, EARLIER  
2 THAN THAT MAYBE.

3 ANYWAY, IT BASICALLY HELD THAT THE BOARDS OF  
4 RETIREMENT HAD FLEXIBILITY WITH REGARD TO A LOT OF THESE  
5 TYPES OF BENEFITS. AND THERE WAS ANOTHER CASE, HOWARD  
6 JARVIS CASE.

7 SO WHAT VENTURA SAYS IS THAT WE HAVE TO READ  
8 THE STATUTE LITERALLY. IT SAID -- THE STATUTE SAYS  
9 BENEFITS PAID AS CASH; QUOTE, UNQUOTE, PAID AS CASH.

10 NOW, THE BENEFITS AT ISSUE HERE, THESE ARE  
11 OBP -- O -- OPTIONAL BENEFIT PLAN PAYMENTS. THE  
12 PAYMENTS -- THE RECORD IS UNCONTESTED. YOU CAN CHECK  
13 THAT IF YOU WANT. I'M SURE YOU DON'T WANT TO. BUT  
14 ANYWAY, IT'S ALL IN THERE.

15 THE -- THE BENEFITS WERE PAID AS CASH. AND  
16 THERE'S TWO WAYS THAT I GOT THEM AS CASH. ONE IS YOU  
17 CAN -- YOU CAN GET REIMBURSED FOR HEALTHCARE BENEFITS.  
18 YOU SUBMIT A CLAIM TO ORANGE COUNTY. BASICALLY THERE'S  
19 AN ADMINISTRATOR. YOU SEND IT IN.

20 THEY SEND YOU A CHECK OR -- YOU KNOW, I THINK  
21 IT WAS A CHECK. BUT ANYWAYS, CASH. I DON'T THINK --  
22 THEY DIDN'T PRINT IT AS A PAYCHECK. BUT ANYWAY, IT WAS  
23 CASH.

24 AND THE OTHER -- THE OTHER TYPE OF CASH THAT  
25 THEY GAVE YOU IS IF YOU ELECT TO DO NOTHING OR IF YOU

2 0

1 MINUTES INTO THIS PORTION OF THE HEARING. IF THERE'S  
2 SOMETHING THAT YOU WOULD LIKE TO SAY THAT WE WOULD FIND  
3 PERSUASIVE, NOW WOULD BE THE TIME TO SAY IT.

4 MR. MORELL: THANK YOU. I APPRECIATE THAT.  
5 BUT I DO WANT TO GIVE SOME CONTEXT HERE.

6 AND, UNFORTUNATELY, I -- I PUT MOST OF -- I  
7 REALLY HAVE TO COMMEND -- RECOMMEND THAT YOU READ WHAT I  
8 WROTE. AND I CAN'T REALLY ADD TOO MUCH TO THAT. I'LL  
9 TRY TO SUMMARIZE IT AND WALK YOU THROUGH IT.

10 IF YOU HAVEN'T READ IT, YOU'RE GOING TO END UP  
11 JUST RELYING ON COUNSEL THAT YOU -- THAT YOU GENERALLY  
12 TRUST IN THESE MATTERS, AND THAT'S THE POINT I'M TRYING  
13 TO MAKE.

14 IT REQUIRES A LOT OF WORK. AND HERE YOU'RE  
15 ACTING AS -- IN SOMEWHAT OF AN UNFAMILIAR ROLE. AND  
16 THAT'S DIFFICULT, AND I UNDERSTAND THAT.

17 ANYWAY, I JUST WANT TO SAY A LITTLE BIT ON  
18 HOW -- I TALKED ABOUT HOW WE GOT HERE A LITTLE BIT. THE  
19 VENTURA DECISION. THIS ALL INVOLVES THE VENTURA  
20 DECISION.

21 PRIOR TO 1997 WHEN THAT DECISION CAME DOWN BY  
22 THE CALIFORNIA SUPREME COURT, IT WAS GENERALLY REGARDED  
23 THAT THESE TYPES OF BENEFITS WERE -- WERE DISCRETIONARY  
24 WITH THE BOARDS OF RETIREMENT.

25 THERE WAS A CASE CALLED GUELFI, A COURT OF

1 9

1 ACTUALLY AFFIRMATIVELY CHOOSE IT, YOU GET THE ENTIRE  
2 \$3500 ANNUAL BENEFIT AS CASH IN YOUR FIRST PAYCHECK OF  
3 THE NEW YEAR. SO THESE ARE CASH BENEFITS, CASH  
4 PAYMENTS.

5 CALIFORNIA SUPREME COURT IN -- IN VENTURA,  
6 WHICH IS THE CONTROLLING DECISION HERE, SAID PAID AS  
7 CASH MEANS PAID AS CASH. VERY SIMPLE. THEY MADE IT  
8 VERY SIMPLE. THEY CALL IT A RED LINE.

9 IN SUBSEQUENT COURSES -- CASES AND CASE LAW,  
10 COURTS OF APPEAL HAVE REFERRED TO IT AS A RED LINE, AND  
11 THEY TREATED IT AS SUCH.

12 NOW, I JUST WANT TO MENTION THAT IN -- IN  
13 OCERS' RESPONSE, STAFF COUNSEL'S RESPONSE BRIEF, THEY  
14 SAY THE PENSIONABLE TREATMENT OF OBP BENEFITS AS  
15 FLEXIBLE BENEFITS WAS NOT REALLY REQUIRED TO BE  
16 PENSIONABLE BEFORE FORMER SECTION 31460.1; AND,  
17 THEREFORE, IT'S REPEAL BY SECTION 193 DID NOT CHANGE  
18 THAT.

19 WELL, WHAT CHANGED IT WAS VENTURA. SO -- SO  
20 THAT'S THE KEY HERE. AND WHAT HAPPENED AFTER THE  
21 VENTURA DECISION, THIS BOARD BASICALLY COMMISSIONED  
22 FIDUCIARY COUNSEL TO MAKE AN ANAL -- TO UNDERTAKE AN  
23 ANALYSIS OF THE EFFECTS OF THAT DECISION.

24 THE EXHIBIT B TO MY DECLARATION -- AND BY THE  
25 WAY, EXHIBIT B TO MY DECLARATION DOES NOT CONSIST OF

2 1

1 HUNDREDS OF PAGES OF DOCUMENTS. I HOPE THEY GAVE IT TO  
2 YOU CORRECTLY.

3 BUT ANYWAY, IT'S VERY FEW PAGES. IT'S THE  
4 SUMMARY TAKEN FROM A PRIOR COURT DECISION. IT'S THE  
5 MINUTES OF THE AD HOC COMMITTEE IN EARLY 1998 AND THE  
6 BOARD MEETING IN 1998 WHERE ALL THESE THINGS WERE  
7 ADDRESSED.

8 MR. LIEDERMAN ADDRESSED THE BOARD, PRESENTED  
9 HIS ANALYSIS. AND, FRANKLY, WHAT I'M -- WHAT MY  
10 POSITION HAS TO BE AND I'M SORRY TO HAVE TO --

11 NOTHING PERSONAL, MR. LIEDERMAN.

12 BUT HE WAS WRONG. OKAY. HE GAVE A SHODDY  
13 ANALYSIS, FRANKLY. AND WHAT HE DID WAS HE SAID -- HE  
14 SAID THAT EVEN THOUGH HE ACKNOWLEDGED THAT BECAUSE THESE  
15 OPTIONAL BENEFIT PAYMENTS ARE PAID AS CASH, THAT  
16 NORMALLY THEY WOULD BE COVERED UNDER VENTURA AND THAT  
17 THEY WOULD HAVE TO BE INCLUDED IN PENSIONABLE BENEFITS  
18 IN THE CALCULATION OF RETIREMENT ALLOWANCES.

19 HOWEVER, WHAT -- WHAT HE DID WAS HE CITED  
20 FORMER GOVERNMENT CODE SECTION 31460.1, WHICH HAD BEEN  
21 REPEALED IN 1992 ABOUT A YEAR AND A HALF AFTER IT WAS  
22 ENACTED.

23 AND HE BASICALLY SAID THAT THAT WAS STILL IN  
24 EFFECT. IN ORANGE COUNTY AT LEAST, THE LEGAL EFFECT OF  
25 THAT WAS STILL -- STILL APPLIED; AND THAT ORANGE COUNTY

2 2

1 NOW, WHERE WE PART WAYS IS WHAT HAPPENED AFTER  
2 IT WAS REPEALED.

3 AND -- AND THE PROBLEM IS -- ONE OF THE  
4 PROBLEMS IS THAT THE REPEAL OF THE STATUTE BASICALLY  
5 MEANS IT'S -- IT'S -- IT BECOMES INEFFECTIVE. IT'S  
6 NEGATED. IT'S NO LONGER ON THE BOOKS.

7 SO THE QUESTION -- AND WHAT MR. LEIDERMAN'S  
8 ANALYSIS LED TO WAS BECAUSE THE BOARD OF SUPERVISORS  
9 ALREADY ADOPTED THIS IN ORANGE COUNTY, IT'S STILL IN  
10 EFFECT, IN PERPETUITY IN EFFECT.

11 NOW -- AND THE REASON FOR THAT AND -- AND JUST  
12 TO BE CLEAR, THERE'S CASE LAW THAT SAYS IN THIS TYPE OF  
13 SITUATION WHERE YOU HAVE A STATUTE SUCH AS A FORMER  
14 GOVERNMENT CODE SECTION AND IT'S REPEALED, EVEN THOUGH  
15 IT WAS ADOPTED AND IS FASHIONED BY THE BOARD OF  
16 SUPERVISORS, THE BOARD OF SUPERVISOR'S ACTION BECOMES A  
17 NULLITY UPON THE REPEAL OF THE STATUTE.

18 NOW, THAT'S THE RANSOME-CRUMMEY LINE OF CASES.  
19 I HOPE -- I HOPE YOU REVIEW THE PAPERS AND YOU SEE THAT  
20 LINE OF CASES.

21 IT'S A 100-YEAR-OLD SUPREME COURT DECISION.  
22 THERE'S NEVER BEEN ANY OTHER WAY. NO OTHER COURT HAS  
23 HELD OTHERWISE. AND STAFF COUNSEL HAS NOT CITED ANY  
24 CASE TO THE CONTRARY.

25 SO THAT'S SETTLED LAW. THE RESOLUTION IN

2 4

1 HAD BEEN GRANDFATHERED INTO THIS.

2 NOW, WHAT FORMER SECTION 31460.1 DID -- I CAN  
3 QUOTE IT HERE -- IT SAYS, COMPENSATION SHALL NOT INCLUDE  
4 EMPLOYER BENEFITS INCLUDING CASH PAYMENTS MADE TO OR ON  
5 BEHALF OF THEIR EMPLOYEES WHO HAVE ELECTED TO  
6 PARTICIPATE IN A FLEXIBLE BENEFITS PROGRAM WHERE THOSE  
7 PAYMENTS REFLECT AMOUNTS THAT EXCEED THEIR EMPLOYEES'  
8 SALARIES.

9 NOW, THE SECOND SECTION SAYS: THIS SECTION  
10 SHALL NOT BE OPERATIVE IN ANY COUNTY UNTIL THE BOARD OF  
11 SUPERVISORS SHALL, BY RESOLUTION ADOPTED BY THE MAJORITY  
12 VOTE, MAKE THIS COUNTY -- THIS SECTION APPLICABLE IN THE  
13 COUNTY.

14 NOW, THE BOARD OF SUPERVISORS, ORANGE COUNTY,  
15 MADE THAT SECTION APPLICABLE BEGINNING JANUARY 1ST,  
16 1991.

17 SO -- AND SO COUNSEL -- STAFF COUNSEL AND I  
18 ARE IN AGREEMENT THAT DURING ALL OF 1991 AND UP UNTIL  
19 THE STATUTE WAS REPEALED ON MAY 14TH OF 1992, THAT --  
20 THAT BASICALLY EVERYTHING THAT HAPPENED WAS -- WAS  
21 EXCLUDABLE.

22 THE -- THE -- EVERYTHING THAT HAPPENED UNDER  
23 THAT STATUTE WAS PROPER AND THAT BENEFITS -- OBP  
24 BENEFITS WERE PROPERLY EXCLUDED UNDER -- UNDER THAT  
25 REPEALED STATUTE DURING THAT TIME PERIOD.

2 3

1 ITSELF, AS A RESOLUTION, CANNOT CONTRAVENE STATE LAW,  
2 THE COUNTY EMPLOYEES RETIREMENT ACT, ANY MORE THAN A  
3 SETTLEMENT AGREEMENT CAN. STATE LAW CONTROLS OVER THE  
4 ACTIONS OF THE COUNTY BOARD.

5 NOW, WHAT MR. LEIDERMAN ALSO RELIED ON IS THE  
6 SAVINGS CLAUSE IN THE STATUTE THAT REPEALED THIS  
7 SECTION.

8 WHAT THAT SAVINGS CLAUSE SAID IS NOTHING IN  
9 THIS ACT IS INTENDED TO OR SHALL BE CONSTRUED TO AFFECT  
10 THE VALIDITY OF ANY ACTION TAKEN BY A COUNTY PURSUANT TO  
11 SECTION 31460.1 OF THE GOVERNMENT CODE PRIOR TO THE  
12 EFFECTIVE DATE OF THIS ACT.

13 OKAY. AND SO HE LOOKED AT THAT AND HE SAID,  
14 GREAT. WE'RE GRANDFATHERED IN. AND BECAUSE -- BECAUSE  
15 THE COUNTY BOARD OF SUPERVISORS' ACTION IN ADOPTING  
16 THIS -- THIS PROVISION OF THE GOVERNMENT CODE WAS AN  
17 ACTION BY THE COUNTY AND IT WAS DONE PRIOR TO THE  
18 EFFECTIVE -- PRIOR TO THE REPEAL OF THE STATUTE;  
19 THEREFORE, WE'RE GOOD. WE'RE GOOD FOREVER. IT'S IN  
20 THERE.

21 I'M HERE TO TELL YOU THAT THAT IS NOT GOOD.  
22 IT'S NOT SOUND LEGAL ANALYSIS. IT'S WRONG, AND I'LL  
23 TELL YOU WHY.

24 FIRST OF ALL, THE -- THE ACTION BY THE COUNTY  
25 IN ADOPTING -- IN ADOPTING THAT FORMER SECTION, ALL IT

2 5

1 DID WAS ADOPT THE STATUTE, AND THEY ADOPTED IT EFFECTIVE  
 2 JANUARY 1ST, 1991.  
 3 THAT DOESN'T -- THEY DID NOT -- THAT ACTION  
 4 DID NOT IN ITSELF PUT IT IN EFFECT IN PERPETUITY. AND,  
 5 GENERALLY, THERE IS CASE LAW ON THIS. IF YOU ARE GOING  
 6 TO MAINTAIN A STATUTE IN EFFECT, WHAT YOU DO IS YOU  
 7 AMEND THE STATUTE.  
 8 IF THE LEGISLATURE REPEALS A STATUTE RATHER  
 9 THAN AMENDS IT, IT'S NO LONGER IN EFFECT. SO IF -- SO  
 10 WHAT MR. LEIDERMAN SAYS, THIS -- THIS THING IS DONE BY  
 11 GRANDFATHERING IT INTO EFFECT, WHAT THE LEGISLATURE  
 12 WOULD HAVE DONE IS SAY, EXCEPT FOR -- EXCEPT IN COUNTIES  
 13 WHERE IT HAS ALREADY BEEN ENACTED, THE STATUTE IS  
 14 REPEALED OR THE -- THE STATUTE IS AMENDED TO PROVIDE  
 15 THAT ONLY IN COUNTIES WHERE THE STATUTE WAS ADOPTED  
 16 PRIOR TO THIS REPEAL, IT SHALL REMAIN IN EFFECT.  
 17 THAT'S NOT WHAT THE LEGISLATURE DID. WHAT  
 18 THEY SAY IS, NOTHING IN THIS ACT IS INTENDED TO BE OR  
 19 SHALL BE CONSTRUED TO AFFECT THE VALIDITY OF ANY ACTION  
 20 TAKEN BY THE COUNTY PRIOR TO THE EFFECTIVE DATE OF THIS  
 21 ACT.  
 22 OKAY. SO IT'S CLEAR FROM THE -- FROM LANGUAGE  
 23 ELSEWHERE IN THIS REPEALING LEGISLATION THAT WHAT --  
 24 WHEN THEY -- WHEN THEY'RE TALKING ABOUT ACTION BY A  
 25 COUNTY, YES, THAT INCLUDES THE ACTION BY THE BOARD OF

2 6

1 SUPERVISING -- SUPERVISORS ADOPTING THIS -- THIS  
 2 REPEALED STATUTE.  
 3 HOWEVER, IT ALSO INCLUDES OTHER ACTIONS  
 4 INCLUDING ALL THE PROCESSING OF RETIREES, ALL THE  
 5 ADMINISTRATIVE ACTIONS TAKEN BY OCERS DURING THAT  
 6 PERIOD, 1991 TO MID 1992, MAY 1992, WHILE THE STATUTE  
 7 WAS IN EFFECT.  
 8 SO WHAT THAT MEANS IS IT DOESN'T -- BY  
 9 REPEALING THIS, THEY DIDN'T UNDO WHAT HAD BEEN DONE  
 10 WHILE THE STATUTE WAS IN EFFECT IN ORANGE COUNTY. ALL  
 11 RIGHT.  
 12 BUT THEY DIDN'T SAY THAT IT STAYS IN EFFECT.  
 13 SO -- AND -- AND THE REASON YOU CAN SAY THAT IS BECAUSE  
 14 IT'S NOT SELF-EXECUTING.  
 15 THE BOARD OF RESOLUTION -- THE COUNTY BOARD  
 16 RESOLUTION ADOPTING THE ACT WAS NOT SELF-EXECUTING. ALL  
 17 THEY SAID WAS WE HEREBY ADOPT THE ACT EFFECTIVE THIS  
 18 DATE.  
 19 WELL, THAT DOESN'T MEAN THAT ANY OTHER ACTION  
 20 TAKEN BY OCERS AFTER THE REPEAL OF THE STATUTE IS VALID.  
 21 WHAT THIS REPEALING -- IT'S CALLED A SAVING CLAUSE.  
 22 WHAT IT SAYS IS, PRIOR TO THE EFFECTIVE DATE  
 23 OF THIS ACT, NOTHING IN THIS ACT IS INTENDED TO OR SHALL  
 24 BE CONSTRUED TO AFFECT THE VALIDITY OF ANY ACTION TAKEN  
 25 BY A COUNTY, WHICH INCLUDES OCERS, PRIOR TO THE

2 7

1 EFFECTIVE DATE OF THIS ACT.  
 2 WELL, THAT'S FINE. AND THE EFFECTIVE DATE OF  
 3 THE ACT WAS MAY 14, 1992.  
 4 NOW, WHAT HAPPENED AFTER THE EFFECTIVE DATE OF  
 5 THE ACT WAS OCERS ADOPTED THIS -- I CALL IT THIS  
 6 RESOLUTION IN THE WAKE OF VENTURA, RESOLUTION 98-001.  
 7 THAT ADOPTION OF THAT RESOLUTION WAS NOT  
 8 WITHIN THE SCOPE OF THE SAVINGS CLAUSE. THAT WAS NOT AN  
 9 ACTION TAKEN PRIOR TO THE EFFECTIVE DATE OF THIS ACT.  
 10 YOU CAN'T DO IT. IT'S NO LONGER -- YOU CAN'T  
 11 DO THAT UNDER THE REPEALED STATUTE. ONLY ACTIONS TAKEN  
 12 PRIOR TO THE DATE OF THE STATUTE'S APPEAL ARE VALID.  
 13 ADOPTION OF -- INSOFAR AS RESOLUTION 98-001  
 14 DIFFERS FROM THE CERL, IT'S INVALID UNDER THE CERL.  
 15 NOW, THE STATUTE, 31460.1, WAS PART OF THE  
 16 CERL. IT IS NO LONGER AND HASN'T BEEN SINCE MAY 1992.  
 17 SO, THE OTHER -- NOW -- OKAY.  
 18 CHAIRMAN DEWANE: MR. MORELL, WE ARE GETTING  
 19 ON TO 30 MINUTES HERE.  
 20 MR. MORELL: I UNDERSTAND. I APPRECIATE THAT.  
 21 MAY I HAVE A FEW MORE MINUTES? MS. RATTO TOOK A FEW  
 22 MINUTES OF MY TIME OFF.  
 23 CHAIRMAN DEWANE: I UNDERSTAND. THAT'S WHY  
 24 I'M LETTING YOU GO UNTIL GO UNTIL 10:30. SO THAT --  
 25 MR. MORELL: THAT WASN'T 20 MINUTES ANYWAY.

2 8

1 BUT OKAY. THAT'S FINE.  
 2 CHAIRMAN DEWANE: LET'S START WRAPPING UP.  
 3 MR. MORELL: I'M TRYING TO DO THAT. THANK  
 4 YOU.  
 5 OKAY. SO -- SO ANYWAY, BASED ON THE LANGUAGE  
 6 OF THE SAVINGS CLAUSE, IT SIMPLY DOESN'T FOR TWO  
 7 REASONS, ONE WHICH IS THE LANGUAGE DOESN'T PROVIDE FOR  
 8 AN AMENDMENT.  
 9 IT PROVIDES FOR REPEAL OF THE STATUTE, WHICH  
 10 MEANS THE LEGISLATURE DID NOT INTEND TO CONTINUE TO BE  
 11 OPERATIVE AFTER THIS REPEAL.  
 12 SECONDLY, THE LANGUAGE OF THE SAVINGS CLAUSE,  
 13 THE EFFECTIVE DATE OF THE ACT, NOT ONLY WAS RESOLUTION  
 14 98-001 ADOPTED AFTER THE EFFECTIVE -- AFTER THE  
 15 REPEAL -- AFTER THE EFFECTIVE DATE OF THE REPEAL ACT,  
 16 BUT ALSO THE PROCESSING OF MY RETIREMENT APPLICATION IN  
 17 2014 WAS -- WAS AFTER IT.  
 18 SO NEITHER OF THOSE ACTIONS ARE WITHIN THE  
 19 SCOPE OF THE SAVINGS CLAUSE; THEREFORE, YOU CANNOT  
 20 INVOKE -- THERE IS NO GRANDFATHERING AFTER -- AFTER MAY  
 21 14TH OF 1992.  
 22 AND I HAVEN'T HEARD A COHERENT ANALYSIS OF WHY  
 23 IT SHOULD BE DIFFERENT. STAFF COUNSEL AND FIDUCIARY  
 24 COUNSEL JUST SEEM TO INSIST THAT IT IS THAT WAY.  
 25 ANYWAY, THE OTHER THING IS WHERE THE STATUTE

2 9

1 SAYS COMPENSATION SHALL NOT INCLUDE EMPLOYER PAYMENTS  
2 INCLUDING CASH PAYMENTS MADE TO OR ON BEHALF OF THEIR  
3 EMPLOYEES WHO HAVE ELECTED TO PARTICIPATE IN A FLEXIBLE  
4 BENEFITS PROGRAM.

5 WELL, AGAIN, FIDUCIARY COUNSEL, IN 1998 WHEN  
6 HE WAS ANALYZING AND PRESENTING AND ADDRESSING THE BOARD  
7 ABOUT THIS STATUTE, DID NOT MENTION THAT -- THAT  
8 PROVISION.

9 THE EVIDENCE -- I PRESENTED EVIDENCE BEFORE  
10 THE HEARING OFFICER. ALL THAT EVIDENCE IS IN THE  
11 RECORD. I NEVER ELECTED TO PARTICIPATE NOR DID ANY  
12 OTHER SUPERIOR COURT RESEARCH ATTORNEY.

13 NOW, THERE ARE MANY OTHER EMPLOYEES IN ORANGE  
14 COUNTY WHO ARE REPRESENTED BY COLLECTIVE BARGAINING  
15 AGREEMENTS.

16 THEY MAY HAVE, THROUGH THOSE COLLECTIVE  
17 BARGAINING AGREEMENTS, ELECTED TO PARTICIPATE IN THE --  
18 IN THE OPTIONAL BENEFIT PROGRAM.

19 THAT IS NOT THE CASE WITH THE SUPERIOR COURT  
20 ATTORNEYS. THIS IS A STANDARD PART OF OUR PAY PACKAGE.  
21 WE HAD NO SAY OVER IT. IT IS PART OF IT.

22 AND THERE IS ALSO IN THE RECORD THE COUNTY  
23 DOCUMENT WHICH -- WHICH BASICALLY SAYS UNDER SOME  
24 CIRCUMSTANCES YOU CAN -- YOU CAN BE DEEMED TO HAVE MADE  
25 AN ELECTION. WELL, THAT'S NOT WHAT THE LEGISLATURE HAD

3 0

1 OF THE BOARD.

2 SINCE BOTH PARTIES AGREE THAT THE ISSUE TO BE  
3 DETERMINED BY THE BOARD IS WHETHER OCERS PROPERLY  
4 EXCLUDED THE BENEFITS FROM THE CALCULATION OF  
5 MR. MORELL'S FINAL COMPENSATION SEPARATE AND APART FROM  
6 THE SETTLEMENT AGREEMENT, I WOULD LIKE TO START BY  
7 SHOWING A CHART OF THE OBP BENEFITS MR. BARELL -- EXCUSE  
8 ME -- MR. MORELL RECEIVED DURING HIS MEASURING PERIOD,  
9 WHICH WAS FEBRUARY 7, 2011, THROUGH FEBRUARY 6, 2014.  
10 BILL, CAN YOU MAKE THAT A LITTLE BIT LARGER,  
11 PLEASE.

12 THANK YOU.

13 OKAY. SO IN 1990 THE COUNTY OF ORANGE ADOPTED  
14 THE COUNTY OF ORANGE SECTION 125 PLAN, THE OPTIONAL  
15 BENEFIT PROGRAM, OR AS WE REFER TO IT, THE OBP. IT WAS  
16 AND STILL IS A PART OF THE SECTION 125 PLAN AND IS  
17 CONSIDERED A FLEXIBLE BENEFITS PROGRAM.

18 THE SECTION 125 PLAN PROVIDES THAT OBP DOLLARS  
19 CAN BE ALLOCATED TO PAY CERTAIN BENEFITS OR ALLOCATED AS  
20 TAXABLE CASH PAYMENTS.

21 MR. MORELL ALLOCATED HIS OBP DOLLARS TO  
22 HEALTHCARE REIMBURSEMENT ACCOUNT AND TAXABLE CASH  
23 PAYMENTS DURING HIS MEASURING PERIOD.

24 SO YOU WILL SEE THAT THE VERY FIRST DATE IS IN  
25 RED. AND THE REASON FOR THAT BEING IS THAT THE TAX --

3 2

1 IN MIND.

2 IF THAT -- IF THAT IS -- IS --  
3 WHEN THE LEGISLATURE SAYS THE EMPLOYEE HAS THE  
4 OPPORTUNITY TO ELECT TO PARTICIPATE AND THE EMPLOYER  
5 COMES BACK AND SAYS, WELL, YOU, THE EMPLOYER HERE IN  
6 THIS CASE HAS ELECTED TO PARTICIPATE, AND THE EMPLOYEE  
7 HAS NO SAY ON IT, THAT'S NOT A GENUINE ELECTION.

8 SO ANYWAY, THE POINT IS EVEN IF -- EVEN IF THE  
9 STATUTE WERE STILL APPLICABLE, IT WOULD NOT APPLY TO ME  
10 BECAUSE I NEVER ELECTED TO PARTICIPATE IN THE OBP  
11 PROGRAM. IT WAS PART OF OUR GENERAL COMPENSATION  
12 PACKAGE.

13 SO IN THAT CASE VENTURA -- THE SIMPLE VENTURA  
14 RULES GOVERN UNDER THE CERL. IT WAS PAID AS CASH. IT  
15 SHOULD BE INCLUDED IN MY RETIREMENT PACKAGE.

16 AND THAT'S --  
17 CHAIRMAN DEWANE: IS THAT -- IS THAT YOUR  
18 SUMMARIZING STATEMENT?

19 MR. MORELL: THAT'S THE BEST I CAN DO UNDER  
20 THESE CIRCUMSTANCES. THANK YOU.

21 CHAIRMAN DEWANE: VERY GOOD. THANK YOU,  
22 MR. MORELL.

23 MS. MATSUO, YOU HAVE THE FLOOR.

24 YOU'RE MUTED.

25 MS. MATSUO: GOOD MORNING, MR. CHAIR, MEMBERS

3 1

1 THE TAXABLE CASH PAYMENT IS ALWAYS GIVEN THE VERY FIRST  
2 PAYCHECK IN JANUARY. SO HE WOULD HAVE RECEIVED THAT  
3 CASH PAYMENT IN JANUARY OF 2011.

4 THAT IS OUTSIDE THE MEASURING PERIOD. SO THAT  
5 PARTICULAR ITEM CANNOT BE INCLUDED AS COMPENSATION  
6 EARNABLE.

7 THE OTHER YEARS ARE LISTED, TOO, AS THE MONEY  
8 AMOUNT THAT MR. MORELL ELECTED TO CONTRIBUTE TO HIS  
9 NONTAXABLE HEALTH/DENTAL REIMBURSEMENT ACCOUNT.

10 SO WHAT IS INTERESTING ABOUT THE ACCOUNT IS  
11 YOU USE OBP DOLLARS. YOU ALLOCATE IT TO THE HEALTHCARE  
12 REIMBURSEMENT ACCOUNT.

13 IT REMAINS IN THAT ACCOUNT UNTIL MR. MORELL  
14 SUBMITS RECEIPTS OF COVERED SERVICES. AND THEN HE IS  
15 REIMBURSED IF THAT SERVICE WAS SOMETHING THAT WAS  
16 COVERED.

17 DURING THE YEAR OF THE PLAN, HE MUST TAKE OUT  
18 ALL THAT MONEY BASED ON CERTAIN RECEIPTS. IF THE MONEY  
19 IS NOT USED, THEN THE MONEY STAYS WITH THE COUNTY OR IN  
20 THIS CASE WITH THE SUPERIOR COURT.

21 SO IN 2011 THROUGH 2012, HE ALLOCATED \$700 TO  
22 THAT BENEFIT ACCOUNT, THE HEALTH BENEFIT ACCOUNT. IF HE  
23 HAD NOT SUBMITTED ANY RECEIPTS, HE WOULD LOSE THAT \$700.

24 SO, IN ESSENCE, WHEN HE PUTS THAT MONEY IN  
25 THAT HEALTHCARE ACCOUNT, THAT MONEY IS NO LONGER HIS

3 3



1 UNLESS HE SUBMITS A RECEIPT. SO IT'S JUST YOUR TYPICAL  
2 REIMBURSEMENT. IT'S NOT CASH LIKE HE SAID.

3 BUT, OF COURSE, THE SECOND PART IS HE -- UNDER  
4 THE TAXABLE CASH PAYMENT, THAT LAYS OUT EACH YEAR WHAT  
5 HE GOT IN TAXABLE CASH PAYMENTS. SO THOSE ARE THE  
6 BENEFITS THAT WE HAVE AT ISSUE HERE.

7 OCERS CONTENDS THAT THE ONLY PORTION OF THE  
8 OBP BENEFIT AT ISSUE ARE THE TAXABLE CASH PAYMENTS  
9 RECEIVED BY MR. MORELL, BECAUSE THAT -- THAT HE GAVE  
10 TO OR APPORTIONED TO THE HEALTH AND DENTAL REIMBURSEMENT  
11 ACCOUNT WAS REIMBURSEMENT WHICH DOES NOT FALL WITHIN  
12 RECEIVING CASH.

13 BOTH PARTIES CONCEDE THAT MORELL RECEIVED OBP  
14 BENEFITS PURSUANT TO THE ORANGE COUNTY SUPERIOR COURT'S  
15 SECTION 125 PLAN, THE FLEXIBLE BENEFIT PLAN.

16 BOTH PARTIES AGREE THAT THE OBP BENEFIT WAS AN  
17 ANNUAL FLEXUAL -- FLEXIBLE BENEFIT OF A TOTAL OF \$3,500.  
18 AND BOTH PARTIES AGREE THAT MORELL ALLOCATED HIS OBP  
19 DOLLARS TO HEALTHCARE REIMBURSEMENT ACCOUNT AND TAXABLE  
20 CASH PAYMENT BETWEEN 2011 AND 2014; THUS, HE ELECTED TO  
21 PARTICIPATE IN THE PLAN.

22 IN 1990 THE LEGISLATURE ENACTED GOVERNMENT  
23 CODE SECTION 31460.1.

24 AGAIN, WE MIGHT WANT TO MAKE THAT JUST A  
25 LITTLE BIT BIGGER.

3 4

1 DEFINITION OF COMPENSATION FOUND IN SECTION 31460.

2 IN MAY OF 1992 THE LEGISLATURE REPEALED  
3 SECTION 31460.1 BY SENATE BILL 193 OR SB-193. AND THE  
4 PARTIES AGREE THAT SECTION 31460.1 WAS REPEALED.

5 THEY DIFFER ON THE DEFINITION OF THE SAVINGS  
6 CLAUSE AND THE APPLICATION OR THE EFFECT OF THE SAVINGS  
7 CLAUSE.

8 SO THE SAVINGS CLAUSE IN SECTION 2 --  
9 BILL, CAN YOU SCROLL UP JUST A LITTLE BIT? IT  
10 SHOULD BE HIGHLIGHTED.

11 YEAH. THERE WE GO.

12 SO YOU CAN SEE THE HIGHLIGHTED LANGUAGE IN  
13 SECTION 2. THIS IS THE LEGISLATION REPEALING THE  
14 SECTION.

15 BUT IN SECTION 2 OF IT, IT STATES, NOTHING IN  
16 THIS ACT IS INTENDED TO OR SHALL BE CONSTRUED TO AFFECT  
17 THE VALIDITY OF ANY ACTION TAKEN BY A COUNTY PURSUANT TO  
18 SECTION 314670.1 OF THE GOVERNMENT CODE.

19 NOW, I WANT TO POINT OUT WHAT MR. MORELL HAS  
20 SAID. IN MR. MORELL'S ARGUMENT THAT THIS CODE SECTION  
21 IS NO LONGER VALID, HE INDICATES THAT IT RELATES TO  
22 ACTION TAKEN BY OCERS.

23 WELL, OCERS IS NOT THE COUNTY. OCERS AND THE  
24 COUNTY ARE SEPARATE AND APART. THEY'RE DIFFERENT LEGAL  
25 ENTITIES.

3 6

1 THE FIRST THING YOU'LL NOTICE IS THAT SECTION  
2 31460.1 PROVIDED AN EXCLUSION FROM COMPENSATION OR A  
3 CARVE-OUT FROM SECTION 31460'S DEFINITION OF  
4 COMPENSATION.

5 MR. MORELL OFTEN REFERRED TO THE VENTURA CASE.  
6 VENTURA TALKED ABOUT COMPENSATION UNDER SECTION 31460.  
7 IT DID NOT ADDRESS THE CARVE-OUT UNDER SECTION 31460.1.  
8 SO IT IS NOT APPLICABLE TO THIS SITUATION.

9 AS YOU CAN SEE, ALSO -- I'M NOT GOING TO READ  
10 IT AGAIN -- BUT YOU CAN SEE THAT THE BOTTOM PART OF  
11 SECTION 316 -- EXCUSE ME -- 31460.1 BASICALLY STATES  
12 THAT IT'S NOT OPERATIVE IN ANY COUNTY UNTIL THE TIME THE  
13 BOARD OF SUPERVISORS SHALL, BY RESOLUTION ADOPTED BY THE  
14 MAJORITY VOTE, MAKE THIS SECTION APPLICABLE TO THE  
15 COUNTY.

16 SO ON DECEMBER 18TH, 1990, THE ORANGE COUNTY  
17 BOARD OF SUPERVISORS ADOPTED RESOLUTION 90-1551 WHICH  
18 ADOPTED SECTION 31460.1. AND YOU CAN SEE THE LANGUAGE  
19 OF THE RESOLUTION BEFORE YOU.

20 SO AS OF JANUARY 1, 1991, PURSUANT TO SECTION  
21 31460.1 AND THE BOARD OF SUPERVISORS' RESOLUTION  
22 90-1551, EMPLOYER PAYMENTS TO OR ON BEHALF OF AN  
23 EMPLOYEE FOR A FLEXIBLE BENEFIT PROGRAM, OR HERE THE  
24 OBP, WERE NOT INCLUDED IN THE DEFINITION OF  
25 COMPENSATION. THIS WAS, AGAIN, A CARVE-OUT OF THE

3 5

1 THIS PARTICULAR SECTION TALKS IN TERMS OF ANY  
2 ACTION TAKEN BY A COUNTY PURSUANT TO SECTION 31460.  
3 SECTION 31460.1 ALLOWED THE COUNTY TO ADOPT THE RULE  
4 SAYING, THESE FLEXIBLE BENEFIT PROGRAMS ARE NOT INCLUDED  
5 IN COMPENSATION. THAT WAS THE ACTION THE COUNTY TOOK.

6 SO WHEN THE LEGISLATURE REPEALED SECTION  
7 31460.1, IT ALSO EXPLAINED THAT THE CODE SECTION HAD  
8 BEEN ERRONEOUSLY APPLIED BY OTHER COUNTIES.

9 OTHER COUNTIES MAINTAIN THAT THE SYSTEM --  
10 EXCUSE ME -- OTHER COUNTIES BELIEVE THAT THE SECTION  
11 REQUIRED COUNTIES MAINTAINING RETIREMENT SYSTEMS UNDER  
12 THE 37 ACT TO INCLUDE COMPENSATION UNLESS ITS COUNTY  
13 ADOPTED SECTION 31460.1.

14 IF THE COUNTY DIDN'T ADOPT IT, THEN THE  
15 RETIREMENT SYSTEMS THOUGHT THEY HAD TO INCLUDE IT. AND  
16 THE LEGISLATURE SAID THAT INTERPRETATION WAS NOT  
17 INTENDED. THAT WAS WRONG.

18 THE LEGISLATURE WENT ON AGAIN TO SAY THAT THE  
19 INTENT OF SECTION 31460.1 WAS TO ACCORD TO EACH COUNTY  
20 BOARD OF SUPERVISORS, AT ITS OPTION, THE POWER EITHER TO  
21 PRECLUDE ITS COUNTY RETIREMENT BOARD -- BOARD -- EXCUSE  
22 ME -- FROM INCLUDING THOSE FLEXIBLE BENEFIT PAYMENTS IN  
23 COMPENSATION IF THE COUNTY RETIREMENT BOARD HAD NOT  
24 PREVIOUSLY TAKEN SUCH ACTION, OR TO SUPERSEDE ANY  
25 PREVIOUS DECISIONS BY THE COUNTY RETIREMENT BOARD TO

3 7

1 INCLUDE THOSE FLEXIBLE BENEFIT PAYMENTS IN COMPENSATION.  
2 SO BASICALLY SECTION 31460.1 WAS GIVEN TO THE  
3 COUNTY -- GIVING BACK THE COUNTY THE AUTHORITY TO MAKE  
4 THE DECISION, NOT LEAVING THE DECISION WITH THE  
5 RETIREMENT BOARD.

6 SO BOTH THE PLAIN LANGUAGE AND LEGISLATIVE  
7 HISTORY OF SB-193 SUPPORTS THE BOARD'S IMPLIED FINDING  
8 THAT THE SB-193 DID NOT INVALIDATE PRIOR COUNTY ADOPTION  
9 OF SECTION 31460.1.

10 MOREOVER, THIS ARGUMENT IS FURTHER SUPPORTED  
11 BY THE SUPERIOR COURT'S TENTATIVE DECISION WHICH BECAME  
12 A FINAL ORDER IN THE POST-VENTURA LITIGATION.

13 NOW, THIS TENTATIVE DECISION WAS IN IN RE:  
14 CASES. THIS WAS PART OF AND PRIOR TO THE SETTLEMENT  
15 AGREEMENT.

16 AND THE SUPERIOR COURT, WHILE IT'S NOT BINDING  
17 ON US, OCERS WAS A PARTY. AND IT ADDRESSED THE ISSUE OF  
18 THE RESOLUTION 90-1551.

19 THE MEMBERS ARGUED IN THAT, THAT RESOLUTION  
20 90-1551 WAS INVALID BECAUSE IT UNCONSTITUTIONALLY  
21 IMPAIRED A VESTED CONTRACTUAL RIGHT.

22 AND THE SUPERIOR COURT ADDRESSED THAT  
23 RESOLUTION AND THE CODE SECTION IN 2001 POST-VENTURA,  
24 POST-REPEAL. AND THE SUPERIOR COURT ADDRESSED IT AS IF  
25 SECTION 31460.1 WAS STILL IN EFFECT.

3 8

1 PARTICIPATE. AND IT DEFINES HOW ONE APPLIES: ANY  
2 ELIGIBLE EMPLOYEE SHALL, DURING THE APPLICABLE OPEN  
3 ENROLLMENT PERIOD, COMPLETE AND SUBMIT TO THE  
4 ADMINISTRATOR ENROLLMENT DOCUMENTATION. THE ELECTION  
5 MADE PURSUANT TO ENROLLMENT DOCUMENTATION SHALL BE  
6 IRREVOCABLE.

7 AND THEN THE SECOND PARAGRAPH: A PARTICIPANT  
8 SHALL NOT CONTINUE PARTICIPATING IN THE PLAN FOR  
9 SUBSEQUENT CONTRIBUTION PERIODS UNLESS HE OR SHE  
10 COMPLETES AND SUBMITS NEW ENROLLMENT DOCUMENTS DURING  
11 EACH OPEN ENROLLMENT PERIOD.

12 THERE IS NO DISPUTE IN THE EVIDENCE THAT  
13 MR. MORELL ELECTED TO PARTICIPATE IN THE OBP PROGRAM  
14 EACH YEAR WHEN HE ELECTED TO ALLOCATE HIS MONEY, HIS OBP  
15 DOLLARS.

16 IN CONCLUSION, THE BOARD SHOULD DECIDE THAT  
17 OCERS PROPERLY EXCLUDED OBP BENEFITS FROM THE  
18 CALCULATION OF MR. MORELL'S FINAL COMPENSATION SEPARATE  
19 AND APART FROM THE SETTLEMENT AGREEMENT BASED ON THE  
20 BOARD OF SUPERVISORS' ADOPTION OF SECTION 31460.1 WHICH  
21 EXCLUDED OBP BENEFITS FROM THE DEFINITION OF  
22 COMPENSATION UNDER THE CERL AND DID SO PRIOR TO ITS  
23 REPEAL.

24 THE SAVINGS CLAUSE CONTAINED IN THE REPEAL  
25 MADE IT CLEAR THAT IT DID NOT AFFECT THE VALIDITY OF ANY

4 0

1 SO THAT SUPPORTS THE POSITION THAT WHEN THE  
2 BOARD OF SUPERVISORS ADOPTED THAT SECTION BY RESOLUTION,  
3 WHEN A SECTION WAS REPEALED, THAT ACTION THAT THE BOARD  
4 OF SUPERVISORS FOR THE COUNTY TOOK REMAINED IN EFFECT;  
5 AND THEREBY KEPT THAT SECTION VALID FOR ORANGE COUNTY.

6 SO IN ORANGE COUNTY, ORANGE COUNTY RETIREMENT  
7 COULD NOT INCLUDE IN COMPENSATION ANY FLEXIBLE BENEFIT  
8 PAYMENTS. AND THAT'S WHERE WE ARE TODAY.

9 SO IT IS WITH THIS BACKGROUND THAT THE BOARD  
10 OF SUPERVISORS ADOPTED RESOLUTION 98-001 BASED IN PART  
11 ON THE COUNTY'S RESOLUTION WHICH ADOPTED SECTION 31460  
12 AND EXCLUDED FLEXIBLE BENEFIT PLANS.

13 NOW, MORELL CONTENDS THAT HE DID NOT ELECT TO  
14 PARTICIPATE IN THIS PROGRAM. BUT THROUGHOUT THE  
15 PROCEEDINGS HE HAS INDICATED THAT HE HAS ELECTED, BY  
16 ALLOCATING HIS \$3500 EACH YEAR WITHIN THE MEASURING  
17 PERIOD AT LEAST, IF NOT EVEN LONGER THAN THAT.

18 BUT SECTION 125 PLAN PROVIDES THAT A  
19 PARTICIPANT IS ANY EMPLOYEE WHO ELECTS TO BECOME A  
20 PARTICIPANT AS PROVIDED IN SECTION 2.

21 IN SECTION 2.2 -- I'LL WAIT FOR THAT TO GET TO  
22 THAT.

23 THERE WE GO. A LITTLE BIT HIGHER, BILL.

24 THERE WE GO.

25 SO SECTION 2.2 IS ENTITLED APPLICATION TO

3 9

1 COUNTY -- EXCUSE ME -- ANY ACTION TAKEN BY THE COUNTY;  
2 I.E., ANY ACTION TAKEN BY THE ORANGE COUNTY BOARD OF  
3 SUPERVISORS.

4 SINCE THE BOARD OF SUPERVISORS ADOPTED SECTION  
5 31460.1 PRIOR TO ITS REPEAL, ITS ACTION CONTINUES TO BE  
6 VALID AS DOES SECTION 31460.1 AT LEAST HERE IN ORANGE  
7 COUNTY.

8 THE BOARD SHOULD ALSO CONCLUDE THAT  
9 MR. MORELL, BY MAKING HIS ELECTION TO ALLOCATE THE 3500  
10 OBP DOLLARS EACH YEAR DURING THIS MEASURING PERIOD, THAT  
11 HE ELECTED TO PARTICIPATE IN THIS FLEXIBLE BENEFIT  
12 PROGRAM THUS MAKING BOTH THE BOARD RESOLUTION AND  
13 SECTION 31460.1 APPLICABLE TO HIM.

14 I WANT TO ALSO BRIEFLY RESPOND TO  
15 MR. MORELL'S STATEMENT THAT THE BOARD'S DECISION ON THE  
16 SETTLEMENT AGREEMENT WAS OVERRULED.

17 ALAMEDA RELIED -- ALAMEDA ADDRESSED A  
18 SETTLEMENT THAT WAS IN CONFLICT WITH CERL. IT'S OCERS'  
19 CONTENTION THAT THE SETTLEMENT AGREEMENT IS NOT IN  
20 CONFLICT WITH THE CERL.

21 IT IS CONSISTENT WITH THE CERL BECAUSE THE  
22 CERL CONTAINED SECTION 31460.1, AND THE BOARD OF  
23 SUPERVISORS ADOPTED THAT SECTION; THEREFORE, OBP  
24 BENEFITS, ACCORDING TO THE LAW, WAS EXCLUDABLE FROM THE  
25 DEFINITION OF COMPENSATION.

4 1

1            THEREFORE, THE SETTLEMENT AGREEMENT COMPLIED  
2 WITH THE 1937 CERL.  
3            MR. MORELL: CAN I JUST MAKE ONE BRIEF  
4 POINT --  
5            CHAIRMAN DEWANE: SURE.  
6            MR. MORELL: -- IN RESPONSE TO THAT, WITH  
7 REGARD TO WHAT SHE JUST SAID ABOUT THE SETTLEMENT  
8 AGREEMENT?  
9            YOU KNOW, THAT MAY WELL BE TRUE. AND -- AND  
10 IF THE SETTLEMENT AGREEMENT, ALL IT DOES IS SAY THAT WE  
11 AGREE TO ABIDE BY THE CERL, I WOULD HAVE NO PROBLEM WITH  
12 THAT.  
13            BUT THAT'S NOT WHAT IT SAYS. IT SAYS WE AGREE  
14 TO PROVIDE -- WE AGREE TO ABIDE BY RESOLUTION 98-001.  
15            SO THE ISSUE HERE IS WHETHER 98-001 IS IN  
16 COMPLIANCE WITH THE CERL. AND THE SETTLEMENT AGREEMENT  
17 IS ESSENTIALLY IRRELEVANT BECAUSE WHAT CONTROLS AND WHAT  
18 THE COURT RULED AND WHAT IS PROPER IS THAT THE CERL, THE  
19 STATE LAW STATUTE, CONTROLS.  
20            NOW, THE QUESTION IS WHETHER THIS REPEALED  
21 STATUTE IS STILL PART OF THAT, IS -- IS ACTUALLY --  
22 SHE'S CORRECT THAT THAT'S THE ISSUE IN DISPUTE.  
23            BUT THE SETTLEMENT AGREEMENT IS ESSENTIALLY  
24 IRRELEVANT. IF ALL IT CAN DO IS -- IS PARROT THE CERL,  
25 IT'S IRRELEVANT BECAUSE THE ISSUE IS WHETHER -- WHAT THE

4 2

1            BOARD MEMBER PREVATT: OKAY.  
2            MR. MORELL: -- YOU CAN'T CHANGE THE STATE  
3 LAW. SO THE ISSUE IS WHETHER -- IS WHAT THE STATE LAW  
4 IS UNDER THE --  
5            BOARD MEMBER PREVATT: OKAY.  
6            MR. MORELL: -- UNDER THE CERL.  
7            BOARD MEMBER PREVATT: GOT IT.  
8            MR. MORELL: SO THAT'S --  
9            BOARD MEMBER PREVATT: OKAY. GOT IT.  
10            OKAY. SO THEN THE ARGUMENT -- THEN BASED ON  
11 THAT, THE ARGUMENTS ABOUT THE SETTLEMENT AGREEMENT, AM I  
12 CORRECT, MS. MATSUO, THAT BECAUSE OF THAT, ONLY THE  
13 REPEALED STATUTE THAT WAS ADOPTED BY THE BOARD OF  
14 SUPERVISORS APPLIES?  
15            AND REGARDLESS OF WHAT THE SETTLEMENT  
16 AGREEMENT SAYS, THE BOARD APPROVED -- THE BOARD ADOPTED  
17 A RULE THAT SAID THESE BENEFITS ARE NOT COMPENSATABLE --  
18 PENSIONABLE BENEFITS, AND THAT'S THE CONTROLLING PIECE?  
19            AM I FOLLOWING THAT CORRECTLY? BECAUSE WHAT  
20 I'M TRYING TO SEPARATE OUT IS, DOES THE SETTLEMENT  
21 AGREEMENT REALLY HAVE ANYTHING TO DO WITH THE CRUX OF  
22 WHETHER OR NOT THE BENEFITS APPLY.  
23            AND BASED ON THE ARGUMENTS, I'M GATHERING THAT  
24 THAT'S -- THAT THE SETTLEMENT AGREEMENT DOESN'T REALLY  
25 PLAY IN THIS. IT'S MERELY ANOTHER EXAMPLE OF CONFIRMING

4 4

1 LAW IS UNDER THE CERL.  
2            SO THE SETTLEMENT AGREEMENT AS SUCH IS REALLY  
3 IRRELEVANT HERE AND THE COURT RULED THAT.  
4            CHAIRMAN DEWANE: FAIR ENOUGH. MR. MORELL,  
5 THANK YOU FOR THAT.  
6            OKAY. ANY QUESTIONS, COMMENTS, CONCERNS BY  
7 THE BOARD?  
8            MR. PREVATT?  
9            BOARD MEMBER PREVATT: YES. AND THANK YOU,  
10 MR. CHAIR.  
11            I AM GOING TO POSE THE QUESTION TO BOTH OCERS'  
12 COUNSEL AND MR. MORELL. AND I'LL START WITH MR. MORELL.  
13            YOU'RE STATING THAT THE SETTLEMENT  
14 AGREEMENT -- BASICALLY THAT -- WHAT IS IT? 316 --  
15            MS. MATSUO: 31460.1. IS THAT WHAT YOU'RE  
16 LOOKING FOR?  
17            BOARD MEMBER PREVATT: THAT ONE, YEAH.  
18            MR. MORELL: THE REPEALED STATUTE, BUT --  
19            BOARD MEMBER PREVATT: YES, THE REPEALED  
20 STATUTE.  
21            YOU'RE SAYING THAT THAT DOESN'T APPLY AS IT  
22 RELATES TO THE SETTLEMENT AGREEMENT.  
23            AM I FOLLOWING THAT CORRECTLY?  
24            MR. MORELL: WELL, THE SETTLEMENT AGREEMENT IS  
25 IRRELEVANT BECAUSE THE SETTLEMENT --

4 3

1 THE DETERMINATION.  
2            IS THAT CORRECT, MS. MATSUO?  
3            MS. MATSUO: I BELIEVE THAT THAT IS ON THE  
4 ROAD TO BEING VERY CORRECT.  
5            THE SUPERIOR COURT WITH THE WRIT HAS DIRECTED  
6 THE BOARD TO LOOK AT THE LAW AT THE TIME MR. MORELL  
7 RETIRED.  
8            AND OCERS' POSITION IS THE LAW WAS THE BOARD  
9 OF SUPERVISORS RESOLUTION 90-1551 AND GOVERNMENT CODE  
10 SECTION 31460.1.  
11            THAT LAW WAS IN EFFECT. THAT LAW EXCLUDED  
12 FLEXIBLE BENEFIT PAYMENTS; I.E., OBP PAYMENTS FROM THE  
13 DEFINITION OF COMPENSATION.  
14            IF IT IS NOT COMPENSATION, IT IS NOT  
15 INCLUDABLE IN YOUR FINAL AVERAGE SALARY OR COMPENSATION  
16 EARNABLE. SO UNDER THE LAW WE PROPERLY EXCLUDED THE  
17 BENEFIT.  
18            BOARD MEMBER PREVATT: OKAY. SO -- AND THEN  
19 THE OTHER QUESTION THAT HAD COME UP WAS MR. MORELL'S  
20 CONTENTION THAT BECAUSE THE REPEAL -- BECAUSE A  
21 PARTICULAR STATUTE WAS REPEALED, THAT IT REMOVED THE  
22 EFFECT OF THE BOARD'S RESOLUTION UPON ITS APPEAL --  
23 REPEAL.  
24            MS. MATSUO: OKAY.  
25            BOARD MEMBER PREVATT: WHAT I'M TRYING TO

4 5

1 FIGURE OUT IS, FROM WHAT I RECALL FROM THE LANGUAGE OF  
2 THE RESOLUTION, THE BOARD ADOPTED WHAT WAS IN THE  
3 REPEALED STATUTE MAKING ALL OF THAT LANGUAGE PART OF  
4 COUNTY ORDINANCE, COUNTY RULE, COUNTY LAW.

5 AND, THEREFORE, JUST BECAUSE THE STATE  
6 REPEALED IT, DOESN'T AUTOMATICALLY REPEAL WHAT THE BOARD  
7 OF SUPERVISORS DID. THE BOARD WOULD HAVE TO GO BACK AND  
8 REPEAL IT THEMSELVES BECAUSE THEY HAD ALREADY TAKEN AN  
9 ACTION.

10 AND JUST BECAUSE THEY IDENTIFIED IT AS A  
11 STATUTE THAT THEY WERE ADOPTING AS OPPOSED TO CREATING  
12 AN ENTIRE RESOLUTION WITH ALL OF THE LANGUAGE THAT WAS  
13 IN THAT STATUTE, BASED ON MR. MORELL'S ARGUMENT, IF THEY  
14 HAD DONE THAT, HE WOULDN'T SUCCEED BECAUSE THE BOARD  
15 MADE A CLEAR RESOLUTION.

16 AND SO THE BOARD WAS ADOPTING LANGUAGE AND NOT  
17 NECESSARILY THE RESOLUTION. IS THAT OCERS' --

18 MS. MATSUO: I THINK I --

19 BOARD MEMBER PREVATT: -- POSITION?

20 MS. MATSUO: I THINK I NEED TO CLARIFY A  
21 LITTLE BIT ON THAT POINT.

22 FIRST OF ALL, LET ME GO TO MR. MORELL'S  
23 CONTENTION ABOUT THE EFFECT OF A REPEAL. MR. MORELL  
24 JUST BLANKETLY SAYS, ANY STATUTE THAT IS REPEALED IS  
25 JUST NO LONGER ANY GOOD.

4 6

1 CHAIRMAN DEWANE: YEAH.

2 MR. MORELL: YEAH. SHE'S CORRECT IN THE SENSE  
3 THAT, YES, THERE IS --

4 CHAIRMAN DEWANE: YOU'RE MUTED.

5 SORRY, MR. MORELL. BEFORE WE GO BACK TO YOU,  
6 MR. ELEY HAS BEEN PATIENTLY WAITING.

7 MR. MORELL: OKAY.

8 BOARD MEMBER ELEY: YEAH. I MEAN, FOR THE  
9 MEMBERS OF THE BOARD ABOUT DILIGENT -- AND I'M ON PAGE  
10 347. AND IT'S BEEN REFERRED TO BY MR. MORELL MANY  
11 TIMES.

12 NOTHING IN THIS ACT IS INTENDED OR SHALL BE  
13 CONSTRUED TO --

14 SO WHEN THEY REPEALED THAT -- THAT PROVISION,  
15 THEY LEFT THIS ESCAPE CLAUSE BASICALLY. YOU CAN SEE  
16 THAT'S WHAT THE LEGISLATURE INTENDED.

17 AND -- AND SO THAT'S WHY I HAVE TROUBLE BUYING  
18 INTO YOUR ARGUMENT THAT IT'S NO LONGER CONSISTENT WITH  
19 THE CERL. THIS IS, IN FACT, THE CERL.

20 MS. MATSUO: EXACTLY.

21 BOARD MEMBER ELEY: WOULDN'T YOU AGREE THAT --  
22 I MEAN, I JUST WANTED TO ASK YOU, MR. MORELL, WOULDN'T  
23 YOU SAY THAT 31460.1 -- NOTHING IN THIS ACT IS  
24 INTENDED TO -- THE THING THAT YOU REPEATED ABOUT FOUR  
25 TIMES, IS THE CERL?

4 8

1 IN ALL THE LAW THAT HE CITED, NONE OF THE  
2 CASES DEALT WITH A REPEALED STATUTE THAT HAD A SAVINGS  
3 CLAUSE. WE HAVE A REPEALED STATUTE THAT HAS A SAVINGS  
4 CLAUSE.

5 AND BECAUSE THAT SAVINGS CLAUSE SAYS, THIS  
6 REPEAL DOES NOT AFFECT THE ACTIONS OF THE COUNTY -- AND  
7 THE ONLY ACTION THE COUNTY DID TAKE OR COULD TAKE UNDER  
8 31460.1, WAS TO ADOPT IT.

9 THEREFORE, ADOPTING IT MADE THE STATUTE STILL  
10 VALID BECAUSE THE ACTION WAS TAKEN BEFORE THE REPEAL.

11 SO, BASICALLY, WE ARE SAYING THAT THE STATUTE  
12 IS STILL GOOD BECAUSE THE BOARD ADOPTED IT PRIOR TO ITS  
13 REPEAL.

14 AND THAT'S WHAT MR. LEIDERMAN HAD SAID. AND  
15 THAT'S WHAT THE COURT, THE JUDGE, SAID WHEN IT ADDRESSED  
16 ITS TENTATIVE RULING IN THE EN RE: CASES AFTER VENTURA.

17 SO WE ARE -- OCERS' POSITION IS THAT THE  
18 SECTION 31460.1 IS STILL VALID IN ORANGE COUNTY BECAUSE  
19 IT WAS ADOPTED BY THE BOARD OF SUPERVISORS AND BECAUSE  
20 THE REPEAL HAD THAT SAVINGS CLAUSE.

21 IF THERE WAS NO SAVINGS CLAUSE IN THERE, THEN  
22 MAYBE MR. MORELL'S ARGUMENT WOULD HAVE MORE BITE TO IT.  
23 BUT WE HAVE THAT SAVINGS CLAUSE.

24 MR. MORELL: CAN I COMMENT ON THAT A LITTLE  
25 BIT?

4 7

1 MR. MORELL: OKAY. WELL, THAT'S THE ISSUE  
2 REALLY, IS WHETHER THAT IS STILL PART OF THE CERL IN  
3 ORANGE COUNTY, WHICH IS A LITTLE STRANGE. THAT'S NOT  
4 NORMALLY THE WAY IT WORKS.

5 I MEAN, IF YOU GO TO THE LIBRARY OR SOMEWHERE  
6 AND TRY TO FIND THAT STATUTE, IT'S NOT EVEN ON THE BOOKS  
7 ANYMORE, WHICH IS NOT THE WAY YOU WOULD THINK THAT THEY  
8 WOULD HANDLE THINGS IF THE LAW WAS STILL IN EFFECT.

9 BOARD MEMBER ELEY: NO. I THINK THAT THAT'S  
10 EXACTLY THE WAY THE LEGISLATURE WOULD HANDLE IT, SIR. I  
11 MEAN, THEY KNEW THAT CERTAIN COUNTIES HAD PASSED IT, AND  
12 THEY WANTED TO LET THEM HAVE THEIR OWN, YOU KNOW --

13 MR. MORELL: LET ME ADDRESS THAT.

14 BOARD MEMBER ELEY: OKAY.

15 MR. MORELL: LET ME ADDRESS THAT IF I MIGHT.

16 YES. THE ISSUE IS THE APPLICABILITY OF THE  
17 SAVINGS CLAUSE.

18 NOW, THE QUESTION IS, IN THAT SAVINGS CLAUSE,  
19 THE KEY THAT MS. MATSUO JUST RAISED -- WHICH IS ACTUALLY  
20 FOR THE FIRST TIME IN SEVEN YEARS THIS ARGUMENT HAS JUST  
21 BEEN RAISED -- IS THAT THE WORD "COUNTY," SHE SAYS, ONLY  
22 MEANS THE COUNTY -- BASICALLY THE COUNTY BOARD OF  
23 SUPERVISORS.

24 NOW, THAT'S A NEW ARGUMENT. AND IT'S --  
25 IT'S DEMONSTRABLY NOT CORRECT. BECAUSE IF I COULD --

4 9

1           COULD I ASK MR. -- MR. SINGLETON TO PUT THE  
2 SAVINGS CLAUSE -- THE LANGUAGE OF THE SAVINGS CLAUSE  
3 BACK ON THE -- ON THE BOARD?  
4           WE HAD THAT UP BEFORE, THE HIGHLIGHTED  
5 LANGUAGE.  
6           I DON'T KNOW, MS. MATSUO, IF THAT'S POSSIBLE.  
7 BUT ANYWAY, I WOULD LIKE TO --  
8           MS. MATSUO: YEAH. HE CAN.  
9           MR. MORELL: BECAUSE, YES, THERE'S OTHER  
10 LANGUAGE --  
11           NOW, IF YOU COULD SCROLE DOWN TO -- TO SECTION  
12 3. SECTION 2 IS THE SAVINGS CLAUSE ITSELF.  
13           THAT'S -- YOU KNOW, OKAY.  
14           THERE WE GO. OKAY.  
15           THAT'S SECTION 2. NOW, KEEP GOING TO SECTION  
16 3, SUBSECTIONS 7 AND 8.  
17           7 AND 8, YOU GOT THOSE UP THERE. OKAY. YOU  
18 CAN STOP THERE.  
19           NOW, YOU SEE IN THOSE SUBDIVISIONS -- NOW, SEE  
20 IN SUBDIVISION 7 WHERE IT SAYS, AGAIN, ANY COUNTY  
21 ACTIONS.  
22           NOW, THAT'S -- THOSE COUNTY ACTIONS, THAT  
23 CAN'T MEAN ANYTHING DIFFERENT FROM THE COUNTY ACTIONS  
24 THAT THEY'RE REFERRING TO IN SECTION 2, WHERE IT SAYS,  
25 SHALL NOT AFFECT ANY ACTION TAKEN BY A COUNTY.

5 0

1 REPEAL STATUTE, IF THAT'S WHAT "COUNTY" MEANS, OR IF  
2 "COUNTY" MEANS CAN INCLUDE THE OCERS BOARD.  
3           AND I THINK IT'S CLEAR FROM -- YOU CAN READ  
4 THEM FOR YOURSELVES HERE WHAT THE -- THE LANGUAGE THAT  
5 THEY USED.  
6           CLEARLY, THEY'RE REFERRING TO ACTIONS BY A  
7 COUNTY ON THE BASIS OF THE -- SHE TALKED A LITTLE BIT  
8 ABOUT THE MISCONSTRUCTION OF THE ACT AND WHY IT WAS  
9 REPEALED.  
10           BUT CLEARLY, THEY'RE TALKING ABOUT ACTIONS  
11 TAKEN ON THE BASIS OF MISCONSTRUCTION. AND THAT COULD  
12 NOT BE REFERRING TO THE ORIGINAL ADOPTION BY THE BOARD  
13 OF SUPERVISORS.  
14           SO COUNTY ACTIONS REFERS NECESSARILY TO OTHER  
15 THINGS. AND -- AND IT COULD NOT REFER TO ANYTHING DONE  
16 BY OCERS PRIOR TO MAY OF 1992, WHICH WOULD INCLUDE THE  
17 ADOPTION OF RESOLUTION 98-001 IN 1998. IT WOULD INCLUDE  
18 THE PROCESSING OF MY APPLICATION IN 2014.  
19           SO THOSE ACTIONS ARE OUTSIDE OF THE SCOPE OF  
20 THE SAVINGS CLAUSE. AND, YES, THE SAVINGS CLAUSE IS AN  
21 IMPORTANT -- BUT THE WAY I READ IT AND, I THINK, THE WAY  
22 THAT MAKES MORE SENSE -- AND, AGAIN, THIS IS SOMETHING  
23 YOU HAVE ADJUDICATE.  
24           HER ARGUMENT IS SOMEWHAT PLAUSIBLE, BUT IT'S  
25 NARROW TO ITS -- YOU'RE TRYING TO READ IT BECAUSE YOU

5 2

1           SO THEY'RE STILL TALKING ABOUT THE SAME ACT  
2 HERE, ABOUT COUNTY ACTIONS. BUT IT'S CLEAR HERE THAT  
3 WHEN THEY'RE TALKING ABOUT COUNTY ACTIONS, THEY'RE NOT  
4 TALKING ONLY ABOUT THE ACTION OF A BOARD OF SUPERVISORS  
5 IN ADOPTING THE -- THE ORIGINAL STATUTE.  
6           THEY'RE TALKING, ALSO, ABOUT ACTIONS TAKING --  
7 TAKEN BY ORGANIZATIONS, SUCH AS OCERS, IN THE PROCESSING  
8 OF RETIREMENT APPLICATIONS DURING THE TIME THE STATUTE  
9 WAS IN FECT -- WAS IN EFFECT.  
10           SO THAT'S WHAT THEY'RE TALKING ABOUT HERE.  
11 AND ONCE -- ONCE YOU GET PAST THE IDEA THAT "COUNTY" IN  
12 SECTION 2 ONLY MEANS THE ACTION BY THE BOARD OF  
13 SUPERVISORS IN ADOPTING THE -- THE RESOLUTION, THEN YOU  
14 REALIZE THAT THE -- THE TIME CUTOFF -- IT CHANGES THE  
15 WHOLE MEANING.  
16           BECAUSE WHEN YOU TALK ABOUT OTHER ACTIONS AND  
17 YOU'RE TALKING ABOUT THE PROCESSING OF APPLICATIONS BY  
18 OCERS AND OTHER RETIREMENT BOARDS, THEN -- AND YOU SAY  
19 THAT THOSE ARE ONLY VALID PRIOR TO THE REPEAL OF THE  
20 ACT, THEN YOU'VE GOT A WHOLE DIFFERENT MEANING TO THE  
21 ACT.  
22           SO THE KEY HERE THEN, IF YOU WANT TO -- IF YOU  
23 WANT TO BOIL IT DOWN TO THIS, IS WHETHER YOU THINK  
24 COUN -- LIKE MS. MATSUO SAYS, "COUNTY" ONLY REFERS TO  
25 THAT ACTION IN -- IN DECEMBER OF 1990 ADOPTING THE

5 1

1 WANT TO REACH A CERTAIN OUTCOME. THE LANGUAGE JUST  
2 DOESN'T FIT THAT.  
3           YOU HAVE TO READ THE WHOLE STATUTE AND VIEW,  
4 IN CONTEXT, WHAT THEY MEANT BY "COUNTY ACTIONS." IT  
5 WASN'T JUST THE ADOPTION OF THE RESOLUTION.  
6           SO -- AND -- AND SO THESE OTHER ACTIONS POST  
7 THE REPEAL, POST 1992, ARE NOT VALID. THEY'RE NOT --  
8 THEY'RE NOT PROTECTED UNDER THE SCOPE OF THE -- OF THE  
9 SAVINGS CLAUSE. THAT'S THE ISSUE HERE OR ONE OF THE  
10 ISSUES.  
11           THE OTHER ISSUING BEING WHETHER WE'VE ELECTED  
12 OR NOT. I'M HAPPY TO ADDRESS THAT, ALSO. WHETHER I  
13 ELECTED AND OTHER SUPREME COURT ATTORNEYS EVER ELECTED  
14 TO PARTICIPATE IN THE OBP PROGRAM.  
15           BUT -- AND IF I CAN TOUCH ON THAT BRIEFLY, THE  
16 PROGRAM -- THE PROGRAM IS WHAT GIVES US \$3500 A YEAR.  
17 THAT'S THE PROGRAM.  
18           NOW -- NOW, WHETHER WE ALLOCATE THAT OR NOT,  
19 THE PROGRAM STILL GIVES US \$3500 A YEAR.  
20           SHE WAS TALKING ABOUT WHETHER I MAKE AN  
21 ALLOCATION OR NOT IN THE ANNUAL OPEN-ENROLLMENT PERIOD.  
22           IF -- IF I DIDN'T -- AND SOME RESEARCH  
23 ATTORNEYS AT THE COURT I WORKED WITH DID NOT -- YOU'D  
24 STILL GET THE \$3500. SO YOU ARE STILL PARTICIPATING IN  
25 THE PROGRAM REGARDLESS OF WHETHER YOU ELECTED TO OR NOT.

5 3

1 WHAT THEY'RE TALKING ABOUT IS WHETHER YOU  
2 ELECTED TO RECEIVE ANY OBP BENEFITS. THAT'S WHAT  
3 PARTICIPATION IN THE PROGRAM MEANS UNDER THE -- UNDER  
4 THE REPEALED STATUTE.  
5 BUT THE LEGISLATURE WAS TALKING ABOUT ELECTION  
6 BECAUSE THE WHOLE POINT WAS THEY DIDN'T WANT TO MAKE  
7 THIS APPLICABLE INVOLUNTARILY TO -- TO EMPLOYEES.  
8 THAT'S WHAT -- IF YOU READ THE STATUTE JUST ON  
9 ITS FACE, THAT'S WHAT THEY WERE TRYING TO DO.  
10 SO WHEN SHE SAYS THAT THERE WAS AN ELECTION  
11 AND THIS AND THAT, NO. YOU GET THE \$3500 ONE WAY OR THE  
12 OTHER.  
13 THE ONLY QUESTION IS WHETHER IT'S ALLOCATED TO  
14 CERTAIN USES OR NOT. IF YOU DON'T ALLOCATE IT OR TO THE  
15 EXTENT YOU DON'T ALLOCATE IT OR AS I ALLOCATED IT  
16 PARTIALLY, YOU STILL GET THE WHOLE BENEFIT. AND -- AND  
17 YOU GET IT AS CASH.  
18 AND SO -- BUT, YOU KNOW, YOU ARE STILL  
19 PARTICIPATING IN THE PROGRAM. YOU'RE IN THERE. THEY'RE  
20 GIVING YOU THE MONEY. THAT'S PARTICIPATION IN THE  
21 PROGRAM.  
22 AND I DID NOT ELECT TO. A LOT OF -- LIKE I  
23 SAID, A LOT OF COUNTY EMPLOYEES DID BECAUSE THEY'VE GOT  
24 COLLECTIVE BARGAINING AGREEMENTS THAT INCORPORATE  
25 BECAUSE THEY PROVIDE FOR THE OBP BENEFITS.

5 4

1 BUT I DID NOT. AND THE EVIDENCE IN THE RECORD  
2 IS CLEAR ON THAT.  
3 BOARD MEMBER ELEY: SIR, MAY I INTERRUPT YOU  
4 FOR A SECOND?  
5 I WOULD SAY THAT, YOU KNOW, BY MAKING YOUR  
6 ELECTION YEAR AFTER YEAR, YOU HAVE PARTICIPATED IN THE  
7 PROGRAM.  
8 AND I THINK IF YOU LOOK AT THE OTHER PARTS OF  
9 OUR VENTURA DECISION, IT MAKES A HUGE DIFFERENCE WHETHER  
10 I TOOK THE ANNUAL LEAVE AS VACATION OR CASHED IT OUT.  
11 I MEAN, THAT'S WHAT VENTURA IS ALL ABOUT. SO  
12 AT MOST, YOU WOULD ONLY BE ABLE TO ARGUE THE CASH  
13 PORTION OF IT.  
14 MR. MORELL: WELL --  
15 BOARD MEMBER ELEY: AND THEN THIRDLY, WHEN YOU  
16 LOOKED AT YOUR GROSS PAY AND YOUR NET PAY, DID YOU  
17 NOTICE HOW MUCH WAS BEING TAKEN OUT FOR THIS OBP PROGRAM  
18 TO HAVE IT INCLUDED IN YOUR RETIREMENT?  
19 MR. MORELL: IT WASN'T TAKEN OUT.  
20 BOARD MEMBER ELEY: IT WASN'T TAKEN OUT. SO  
21 WHY DIDN'T YOU COMPLAIN THEN AS AN ACTIVE EMPLOYEE?  
22 HEY, THIS IS NOT --  
23 MR. MORELL: I'M NOT SURE WHAT --  
24 BOARD MEMBER ELEY: DOESN'T THAT SEEM --  
25 DIDN'T THAT SEEM ALARMING TO YOU AT THAT TIME?

5 5

1 MR. MORELL: NO. BECAUSE THIS WAS A BENEFIT.  
2 IT WAS EXPLAINED TO US AS SUCH, YOU KNOW, WHEN I WAS  
3 HIRED; YOU GET THIS SALARY PLUS YOU GET THIS \$3500. SO  
4 THERE IS NO ISSUE ABOUT IT BEING TAKEN OUT.  
5 BUT ANYWAY, TO RESPOND TO YOUR POINT, LET'S  
6 SAY I HAVE -- AS I SAY, THERE ARE RESEARCH ATTORNEYS WHO  
7 NEVER MAKE THE ANNUAL ELECTION, AND THAT'S PERFECTLY  
8 PROPER BECAUSE IT'S A DEFAULT PROVISION THAT YOU JUST  
9 GET THE \$3500 IN YOUR -- IN YOUR FIRST PAYCHECK OF THE  
10 YEAR.  
11 WELL, GUESS WHAT? IF YOU LOOK AT RESOLUTION  
12 98-001, IT DOESN'T SAY THAT THOSE -- THAT THE PEOPLE WHO  
13 MAKE -- WHO DON'T MAKE AN ELECTION DURING THE OPEN  
14 ENROLLMENT PERIOD GET THE -- GET THE \$3500 IN THEIR --  
15 IN THEIR RETIREMENT CALCULATION.  
16 SO THAT -- YOU KNOW, YOUR ARGUMENT OF  
17 DISTINCTION THAT -- THAT YOU DON'T APPLY BY, YOU'RE  
18 SAYING IT ONLY APPLIES -- IT APPLIES TO PEOPLE WHO --  
19 WHO JUST TAKE THE 3500 -- THE WHOLE 3500 AS CASH WITHOUT  
20 ANY REIMBURSEMENT.  
21 BUT GUESS WHAT? UNDER -- UNDER 98-001 AND  
22 YOUR OWN POLICIES -- AND PERHAPS MS. MATSUO CAN ANSWER  
23 THAT -- YOU DON'T GIVE IT TO THOSE PEOPLE.  
24 SO I DON'T KNOW WHY YOU'RE ARGUING THAT THAT  
25 IS THE CASE.

5 6

1 BOARD MEMBER ELEY: I WOULD DISAGREE HAVING,  
2 YOU KNOW, BEEN THERE WHEN 98-001 WAS PASSED AND STUFF.  
3 AND IT MADE A HUGE DIFFERENCE WHETHER IT WAS IN CASH,  
4 WHETHER IT WAS IN THE WINDOW PERIOD, IT MADE A HUGE  
5 DIFFERENCE. SO WE'LL JUST AGREE TO DISAGREE ON THAT.  
6 BUT I'LL JUST SAY THAT IT DOES HURT YOUR CASE,  
7 THE FACT THAT THIS IS PART OF THE CERL. THE BOARD HAS  
8 NEVER REPEALED IT.  
9 IT -- IT LOOKED LIKE A PROVISION THAT WAS  
10 INTENDED BY THE LEGISLATURE TO ALLOW THESE TO CONTINUE  
11 ON, TO EXCLUDE OBP.  
12 OBP HAS THE OTHER PROBLEM THAT IT CAN BE ALL  
13 APPLIED TO MEDICAL, IN WHICH CASE -- JUST LIKE MY HEALTH  
14 CONTRIBUTIONS BY THE EMPLOYER FOR MY -- SAY, KAISER OR  
15 WHATEVER, WHEN I WAS ACTIVE, IT'S NOT INCLUDED IN  
16 VENTURA. I MEAN, IT'S -- IT'S VERY CLEAR.  
17 MR. MORELL: IT'S PAID AS CASH. THE  
18 REIMBURSEMENT CHECK IS CASH. IT'S PAYMENT AS CASH.  
19 BOARD MEMBER ELEY: YOU DID NOT GET CASH WHEN  
20 IT WENT TO YOUR HEALTH PLAN. YOU GOT THE BENEFIT OF THE  
21 HEALTH PLAN. JUST LIKE I --  
22 MR. MORELL: I DID NOT --  
23 BOARD MEMBER ELEY: LET'S SAY I WAS IN KAISER.  
24 I GOT THE BENEFIT OF THE HEALTH --  
25 MR. MORELL: NO, NO, NO, NO, NO. THIS IS

5 7

1 REIMBURSEMENT. I MEAN, THERE WAS NO HEALTH PLAN. I  
2 PAID OUT -- THIS IS WHERE I PAID OUT OF POCKET TO A  
3 DENTIST OR SOMEBODY, AND I SENT IN A CLAIM FOR  
4 REIMBURSEMENT. THERE WAS NO HEALTH PLAN INVOLVED. THIS  
5 IS --

6 BOARD MEMBER ELEY: WELL, THIS IS --

7 MR. MORELL: I THINK WE HAVE A  
8 MISUNDERSTANDING HERE. THIS IS FOR BENEFITS NOT COVERED  
9 BY A HEALTH PLAN. SO THIS IS PAID OUT OF POCKET, MONEY  
10 THAT'S REIMBURSED. AND IT'S CASH.

11 MS. MATSUO: BUT NOT ALL --

12 BOARD MEMBER ELEY: ALL RIGHT. I'LL -- GO  
13 AHEAD, MS. MATSUO.

14 MS. MATSUO: I'M SORRY. REIMBURSEMENTS ARE  
15 NOT INCLUDED IN COMPENSATION. THERE ARE A LOT OF WAYS  
16 TO BE REIMBURSED. OFTENTIMES ATTORNEYS, WE PAY OUR  
17 ATTORNEY FEES AND WE GET REIMBURSED.

18 IF WE DON'T PAY THE ATTORNEY FEES, WE DON'T  
19 GET ANY MONEY.

20 ONCE HE PUT -- OR HE ALLOCATED THAT MONEY TO  
21 THE HEALTHCARE REIMBURSEMENT ACCOUNT, THAT ALLOCATION NO  
22 LONGER WAS HIS.

23 IT WAS AS IF THE COUNTY JUST IS SAYING, IF YOU  
24 HAVE HEALTH SERVICES, WE'LL REIMBURSE YOU. IF YOU DON'T  
25 HAVE THOSE HEALTH AND SER -- HEALTH SERVICES AND YOU

5 8

1 BIT. NONTAXABLE IS NOT REALLY THE RIGHT WORD I WOULD  
2 USE. IT'S REIMBURSED ON A PRETAX BASIS.

3 SO TAXES ARE NOT TAKEN OUT. YOU GET THE FIRST  
4 3500 OR WHATEVER AMOUNT YOU ALLOCATE TO THE  
5 REIMBURSEMENT PROGRAM ASPECT OF IT.

6 MS. MATSUO: SO UNDER THE NONTAX --

7 BOARD MEMBER FREIDENRICH: RIGHT. RIGHT.

8 MS. MATSUO: -- DENTAL REIMBURSEMENT AMOUNT --  
9 SO FOR -- LET'S GO TO THE YEAR 2011-2012. HE ALLOCATED  
10 \$700.

11 SO \$700 OF HIS 3500 OBP DOLLARS WOULD HAVE  
12 GONE INTO THAT ACCOUNT. IF HE SUBMITTED RECEIPTS, HE  
13 WOULD HAVE GOTTEN A TOTAL OF \$700 BACK IN REIMBURSEMENT.

14 MR. MORELL: EXCUSE ME. I DID. AND THE  
15 EVIDENCE IS CLEAR THAT I DID. THAT'S THE ISSUE.

16 THIS IS NOT HYPOTHETICAL. AND YOU HAVE THE  
17 DOCUMENTS THAT ARE IN THE RECORD SHOWING THAT I DID  
18 RECEIVE THAT REIMBURSEMENT AS CASH.

19 MS. MATSUO: OKAY. BUT WHAT WE ARE TALKING  
20 ABOUT IS IT'S STILL REIMBURSEMENT. IT'S STILL  
21 REIMBURSEMENT.

22 MR. MORELL: AND IT'S STILL CASH.

23 BOARD MEMBER FREIDENRICH: AND MY QUESTION IS  
24 ACTUALLY -- IS WHETHER IT'S TAXABLE OR NOT. BECAUSE I  
25 THINK THE INTENT -- AND, AGAIN, I DON'T KNOW. I

6 0

1 DON'T GIVE US A RECEIPT, WELL, THEN COUNTY OR COURT,  
2 WE'RE KEEPING THE MONEY. IT'S OUR MONEY.

3 SO IT IS A REIMBURSEMENT EVEN THOUGH HE GOT  
4 CASH WHEN HE SUBMITTED THE DOCUMENTATION.

5 CHAIRMAN DEWANE: FAIR ENOUGH.

6 MS. FREIDENRICH, YOU HAVE YOUR HAND UP.

7 BOARD MEMBER FREIDENRICH: YES. THANK YOU  
8 VERY MUCH, CHAIR DEWANE.

9 A COUPLE OF QUESTIONS. SO ON THAT CHART THAT  
10 YOU HAD, WHICH IS THE ONE THAT BROKE OUT, THERE WAS A  
11 TAXABLE PORTION AND THERE WAS THE BENEFITS PORTION OF  
12 THE 3500.

13 THE QUESTION -- ONE OF THE QUESTIONS I HAVE OR  
14 THE FIRST QUESTION IS, WHICH OF THAT -- I'M ASSUMING  
15 JUST HIS 2800 THAT FIRST YEAR -- ACTUALLY, THE FIRST  
16 YEAR WAS OUT OF THE BENEFIT PER -- NO.

17 2800 THE FIRST YEAR WAS IN THE THREE-YEAR  
18 BENEFIT PERIOD. THE 2800, THAT WAS TAXABLE; CORRECT? I  
19 THINK THE CHART SAID IT WAS TAXABLE.

20 AND THEN THE \$700, THE DIFFERENCE BETWEEN THE  
21 3500, THAT WENT INTO THE BENEFIT AND I -- WAS  
22 NONTAXABLE? SO THAT'S MY FIRST QUESTION.

23 MS. MATSUO: OKAY. BILL, CAN YOU PULL UP THE  
24 CHART FOR US, PLEASE, SO WE CAN HAVE THAT TO REFER TO.

25 MR. MORELL: IF I MIGHT CLARIFY JUST A LITTLE

5 9

1 WASN'T -- I MEAN, I WAS WORKING IN PRIVATE INDUSTRY,  
2 OBVIOUSLY NOT UNDER A -- UNDER A GOVERNMENT PLAN. BUT  
3 WE HAD FLEXIBLE BENEFIT PLANS.

4 AND IT SEEMED TO ME THAT, YOU KNOW, YOU WERE  
5 TAXED ON IT IN SOME WAYS. AND THEN OTHER -- IF YOU  
6 APPLIED TO THE BENEFIT, IT WAS BASICALLY REIMBURSED  
7 BEFORE -- AS I SAY, ON A PRETAX BASIS.

8 MS. MATSUO: YOU'RE RIGHT. YOU'RE CORRECT,  
9 MS. FREIDENRICH.

10 THE REIMBURSEMENT IS ON A PRETAX BASIS. THERE  
11 IS NO TAX TO THE 700, THE 2500, OR THE 1100 THAT HE  
12 ALLOCATED TO --

13 BOARD MEMBER FREIDENRICH: ON THAT. RIGHT.  
14 SO THERE'S NOT STATE AND FEDERAL TAX THAT HE WOULD HAVE  
15 PAID ON THAT BECAUSE IT WENT TO THE BENEFIT PROGRAM. SO  
16 THAT WAS MY FIRST QUESTION.

17 MS. MATSUO: RIGHT.

18 BOARD MEMBER FREIDENRICH: AND MY SECOND  
19 QUESTION IS, ON THE TAXABLE CASH PAYMENT, DOES THE  
20 PROCESS CHARGE THE PENSION COST AGAINST THAT ADDITIONAL  
21 AMOUNT?

22 SO WHEN SOMEONE RECEIVES THAT, WHETHER IT'S  
23 THE 2800 OR THE 3500, THAT, I'M ASSUMING, GOES INTO YOUR  
24 W-2.

25 AND MY QUESTION IS THE PENSION SIDE -- AND

6 1

1 THIS IS WHERE I'M NOT FAMILIAR, WHEN -- SINCE IT WAS  
2 CONSIDERED PART OF SALARY AS W-2, WOULD SOMEONE HAVE  
3 REASONABLY PAID A PENSION, BOTH THE COUNTY AND IF THERE  
4 WAS A REVERSE PICKUP OR WHATEVER WAS IN PLACE, WAS  
5 THERE -- WAS THERE A PENSION COST TO THAT THAT WAS  
6 CHARGED?

7 MS. MATSUO: IT'S MY UNDERSTANDING THAT THERE  
8 WAS -- IF I'M UNDERSTANDING YOUR QUESTION RIGHT, THERE  
9 WAS NO CONTRIBUTION PAID TO THE RETIREMENT SYSTEM --

10 BOARD MEMBER FREIDENRICH: OKAY.

11 MS. MATSUO: -- UNDER OR OUT OF THE 2800, THE  
12 1,000, AND THE 2400 THAT HE TOOK OUT IN TAXABLE CASH  
13 PAYMENTS.

14 BOARD MEMBER FREIDENRICH: OKAY. SO WHAT  
15 YOU'RE SAYING IS THE COUNTY NOR THE -- THE PERSON PAID  
16 ANY TYPE OF CONTENTION CONTRIBUTION ON THAT TAXABLE CASH  
17 PAYMENT --

18 MS. MATSUO: CORRECT.

19 BOARD MEMBER FREIDENRICH: -- THE OBP?

20 MR. MORELL: IF I MIGHT, I BELIEVE THAT'S --  
21 THAT MAY BE CORRECT. AND IF IT'S SO, THAT WAS -- THAT  
22 WAS IMPROPER. AND MY CONTENTION IS IT WAS IMPROPER  
23 UNDER VENTURA.

24 SO THAT'S, YOU KNOW -- AND -- AND PRIOR -- AND  
25 WHEN VENTURA CAME OUT, THERE HAD TO BE A LOT OF

6 2

1 JUST WHAT WERE THE FACTS.

2 SO IT SOUNDS LIKE -- AND I DO A LITTLE BIT  
3 AGREE THAT IF THE OBP -- MY UNDERSTANDING OF THE OBP IS  
4 IF YOU DO NOTHING, YOU STILL GET THE MONEY.

5 SO IF YOU DO NOTHING, IT COMES OUT IN THAT  
6 FIRST PAYCHECK. AND IT SOUNDS LIKE THAT'S THE SAME WAY  
7 IT WAS BACK IN -- YOU KNOW, IN 2011 HERE.

8 BUT IF YOU DO ELECT TO PUT SOME INTO A  
9 BENEFIT, IN MY MIND THAT IS AN ELECTION. SO I THINK  
10 THAT -- YOU KNOW, SIMILAR TO, I THINK, WHAT TRUSTEE ELEY  
11 HAD MENTIONED, YOU KNOW, I'M NOT SURE BECAUSE NOW YOU'RE  
12 APPLYING IT AGAINST AN ACTUAL BENEFIT.

13 AND, YOU KNOW, THIS IS WHERE, YOU KNOW, I  
14 THINK, YES, IT IS REIMBURSEMENT FOR SOMETHING. BUT NOW,  
15 YOU'RE ACTUALLY MAKING THAT ELECTION.

16 SO I AGREE THAT YOU MADE AN ELECTION, AND THAT  
17 I WOULD HAVE TO LOOK AT THAT A LITTLE MORE CLOSELY. AND  
18 I'M NOT SURE THAT THAT'S A -- YOU KNOW, A BENEFIT  
19 BECAUSE YOU DID HAVE CASH PAYMENTS IN THOSE YEARS THAT  
20 WERE -- BASICALLY WERE STILL BASICALLY FROM THAT OBP.

21 SO THEN MY NEXT QUESTION --

22 MR. MORELL: CAN I JUST RESPOND TO THAT  
23 QUESTION?

24 BOARD MEMBER FREIDENRICH: -- IS --  
25 UH-HUH.

6 4

1 ADJUSTMENTS AS -- AS YOU CAN READ IN THE MINUTES FROM  
2 THOSE PROCEEDINGS THAT MR. LEIDERMAN EXPLAINED TO THE --  
3 TO THE BOARD.

4 AND A LOT OF ADJUSTMENTS WERE MADE, I BELIEVE,  
5 IN ORDER TO BRING THE -- YOU KNOW, THE CONTRIBUTIONS,  
6 WHICH HAD NOT BEEN MADE, TO BRING THOSE BACK INTO  
7 BALANCE.

8 AND THAT -- THAT -- I BELIEVE VENTURA ACTUALLY  
9 SAYS THAT THAT'S THE APPROPRIATE THING TO DO. AND I  
10 BELIEVE THAT WAS DONE.

11 AND IF -- IF I PREVAIL HERE, I GUESS -- I  
12 GUESS YOU WOULD DO THAT AGAIN. BUT JUST -- YOU DON'T --  
13 I GUESS MY POINT IS, IT WOULD BE PUTTING THE CART BEFORE  
14 THE HORSE TO ARGUE THAT BECAUSE -- BECAUSE THIS WAS NOT  
15 TAKEN -- THE TAXES WERE NOT TAKEN OUT OR THE RETIREMENT  
16 CONTRIBUTION WAS NOT TAKEN OUT ADMINISTRATIVELY;  
17 THEREFORE, YOU KNOW, A VIOLATION OF THE LAW WAS OKAY.

18 MY CONTENTION IS, IF THEY WEREN'T TAKEN OUT,  
19 THEY SHOULD HAVE BEEN. SO THERE YOU GO.

20 BOARD MEMBER FREIDENRICH: AND I'M JUST TRYING  
21 TO ESTABLISH A LITTLE BIT OF THE FACTS. I'M NOT MAKING  
22 ANY CONCLUSIONS YET.

23 I'M JUST TRYING TO UNDERSTAND SORT OF -- AND I  
24 APPRECIATE YOUR THOUGHTS. I'M JUST TRYING TO UNDERSTAND  
25 WHAT HAPPENED. NOT THAT IT HAD THIS IMPACT OR NOT.

6 3

1 MR. MORELL: COULD I JUST SAY, IN -- IN -- THE  
2 CONTROLLING LANGUAGE IS THE STATUTE. OKAY. AND YOU  
3 HAVE TO LOOK AT WHAT THE LEGISLATURE INTENDED.

4 AND I WOULD ASK YOU -- AND I UNDERSTAND THAT'S  
5 A PLAUSIBLE ARGUMENT. AND THE -- THE HEARING OFFICER,  
6 THE REFEREE CONSIDERED THAT ARGUMENT. BUT HE RULED  
7 THAT -- THAT MY ARGUMENT WAS MORE -- THAT MY  
8 CONSTRUCTION OF THE STATUTE WAS MORE PLAUSIBLE.

9 AND THE REASON IS, IF YOU THINK ABOUT WHAT THE  
10 LEGISLATURE DID IN INSERTING THAT PROVISION, WHERE  
11 THE -- IT ONLY APPLIED TO EMPLOYEES WHO MADE AN  
12 ELECTION.

13 WHY WOULD IT MAKE SENSE FOR THE LEGISLATURE TO  
14 HAVE SAID, WELL, EMPLOYEES WHO USE -- WHO ALLOCATE THIS  
15 MONEY TO CERTAIN USES WON'T HAVE IT BE PENSIONABLE, BUT  
16 EMPLOYEES WHO -- WHO -- WHO DON'T ALLOCATE IT GET THE  
17 PENSIONABILITY?

18 WHAT WOULD THE LEGISLATURE HAVE BEEN TRYING TO  
19 ACCOMPLISH BY -- BY MAKING THAT DISTINCTION? NO. I  
20 THINK THE -- THE BETTER -- THE THING THAT MAKES MORE  
21 SENSE IS WHAT THE LEGISLATURE WAS TRYING TO SAY, WAS  
22 THAT ALL THEY WANTED -- THEY DID NOT WANT TO FORCE THIS  
23 ENTIRE SCHEME ON EMPLOYEES WHO HAD NOT CONSENTED.

24 THAT -- THAT IS WHAT THEY WERE TRYING TO DO  
25 HERE. THAT'S MY VIEW. IT'S A MATTER OF HOW YOU VIEW

6 5



1 THAT PROVISION IN -- IN THE STATUTE.  
 2 THE STATUTE DOES CONTROL OVER WHAT THE -- THE  
 3 COUNTY ULTIMATELY DID.  
 4 BOARD MEMBER FREIDENRICH: RIGHT. AND THEN  
 5 I -- I -- I, YOU KNOW, APPRECIATE YOUR INPUT ON THAT.  
 6 AND I'M -- THEN MY NEXT QUESTION IS KIND OF  
 7 RELATED TO THE STATUTE.  
 8 ACTUALLY, BEFORE THAT I HAD A QUESTION ON THE  
 9 COUNTY VERSUS THE OCERS. AND I'M NOT SURE HOW -- I'M  
 10 TRYING TO JUST WORK THROUGH THIS BECAUSE WASN'T BACK IN  
 11 1991, THE OCERS PART OF THE TREASURER'S OFFICE AT THAT  
 12 POINT?  
 13 SO IT WAS REALLY THE COUNTY. IT WASN'T A  
 14 SEPARATE COUNTY RETIREMENT. I'M NOT SURE WHEN THAT  
 15 TRANSITION OCCURRED.  
 16 MAYBE MR. ELEY MIGHT KNOW OR MR. PREVATT,  
 17 BECAUSE I DON'T KNOW. I JUST KNOW THAT CERTAINLY  
 18 WHEN -- WE HAVE A LOT OF WORK PAPERS WHERE THE COUNTY  
 19 TREASURER WAS IN CHARGE OF THE -- YOU KNOW, WAS DOING  
 20 QUITE A BIT OF THE -- THE OCERS' WORK.  
 21 WAS THAT BEFORE --  
 22 BOARD MEMBER ELEY: I WOULD ASK MR. LEIDERMAN.  
 23 I WOULD ASK MR. LEIDERMAN.  
 24 BOARD MEMBER FREIDENRICH: AND I'M NOT SURE  
 25 HOW IMPORTANT THE COUNTY VERSUS OCERS --

6 6

1 BOARD MEMBER ELEY: I DON'T KNOW WHEN IT  
 2 BECAME A SEPARATE DISTRICT.  
 3 BOARD MEMBER FREIDENRICH: RIGHT.  
 4 CHAIRMAN DEWANE: MR. LEIDERMAN, DO YOU HAVE  
 5 AN ANSWER?  
 6 MR. LEIDERMAN: YEAH. THAT ACTUALLY HAPPENED  
 7 IN 1947.  
 8 BOARD MEMBER FREIDENRICH: OKAY. OKAY. SO  
 9 IT'S BEEN A LONG, LONG TIME.  
 10 MR. LEIDERMAN: YES.  
 11 BOARD MEMBER FREIDENRICH: OKAY. SO IT WAS A  
 12 SEPARATE COUNTY RETIREMENT.  
 13 MR. LEIDERMAN: AND -- AND THE DEFINITIONS ARE  
 14 IN -- IN THE CERL. THEY TALK ABOUT COUNTY ACTIONS, YOU  
 15 KNOW, CARVE-OUTS THAT COUNTIES CAN ADOPT AS DIRECTIONS  
 16 FROM THE BOARD OF SUPERVISORS IN REFERENCE TO COUNTY --  
 17 BOARD MEMBER FREIDENRICH: OKAY. PERFECT.  
 18 SO IT WASN'T CLOSE TO THIS PERIOD?  
 19 MR. LEIDERMAN: THAT'S RIGHT.  
 20 BOARD MEMBER FREIDENRICH: SO THEN MY NEXT  
 21 QUESTION -- IF WE COULD GO TO THE ACTUAL STATE LAW, THAT  
 22 60.310460.1 (SIC) CODE. I COULDN'T FIND IT IN MY PAD  
 23 HERE UNFORTUNATELY. I'M JUST NOT THAT --  
 24 AND GO TO THE SECTION THAT HAS THE 3, 4, 5, 6,  
 25 7, AND 8, BECAUSE I WANTED TO LOOK AT THE 7 AND 8.

6 7

1 BECAUSE WHEN I THINK OF FLEXIBLE BENEFIT  
 2 PLANS, MY THOUGHT IS THAT GENERALLY -- OR AT LEAST  
 3 WHEN -- WHEN IT STARTED -- AGAIN, THIS WAS IN MORE THE  
 4 PRIVATE -- WAS THAT WHAT THEY WANTED TO DO, IS IF YOUR  
 5 SPOUSE HAD COVERAGE, THEY WOULD PAY YOU CASH TO BE ABLE  
 6 TO ALLOW YOU TO NOT HAVE TO PAY FOR, YOU KNOW -- YOU  
 7 KNOW, LOSE THAT BENEFIT WITH YOUR EMPLOYER AND ALLOW YOU  
 8 TO GO WITH YOUR HUSBAND OR YOUR SPOUSE OR SIGNIFICANT  
 9 OTHER'S EMPLOYER DEPENDING ON WHICH BASICALLY BACK THEN  
 10 ALLOWED FOR COVERAGE?  
 11 AND SO THEY WANTED NOT TO PENALIZE PEOPLE BY  
 12 GIVING A CASH PAYMENT; THAT FLEXIBLE, YOU KNOW, PAYMENTS  
 13 BACK THEN.  
 14 AND I'M TRYING TO THINK OF WHEN IT STARTED  
 15 TURNING INTO MORE OF, YOU KNOW, APPLYING BACK TO  
 16 BENEFITS.  
 17 BUT MY RECOLLECTION THEN IS THAT YOU -- YOU  
 18 COULD RECEIVE A CASH PAYMENT IF YOUR -- AGAIN, YOUR --  
 19 YOUR OTHER COVERED MEMBER HAD COVERAGE THAT WAS BETTER  
 20 THAT WOULD HELP OFFSET SOME OF THE COSTS FOR THAT.  
 21 AND THEN THEY STARTED TO DO THE -- YOU KNOW, I  
 22 KNOW LATER THEY STARTED TO DO -- AND MAYBE THIS WAS IN  
 23 THE 2000'S WHERE YOU -- THEY STARTED TO CHARGE YOU  
 24 THE -- THE -- YOU KNOW, THE SPOUSE'S PRIMARY COVERAGE  
 25 STARTED TO CHARGE YOU IF YOU ALSO HAD ACCESS TO COVERAGE

6 8

1 BECAUSE THEY WERE DOING THE -- I CAN'T REMEMBER THE --  
 2 GOSH, MY HEALTHCARE THINGS WHERE THEY WERE COORDINATING  
 3 BENEFITS -- THE COORDINATION OF BENEFITS SO THAT YOU  
 4 WOULD HAVE TO PAY YOURS FIRST.  
 5 SO WHEN THIS WAS PASSED IN 1991, I'M TRYING TO  
 6 REMEMBER HOW THAT THEORY WAS. AND LIKE I SAY, WHEN I  
 7 LOOK AT NUMBER 6, TO ACCORD TO EACH BOARD OF SUPERVISORS  
 8 THE POWER TO PRECLUDE THE RETIREMENT SYSTEMS FROM  
 9 INCLUDING THOSE FLEXIBLE IN COMPENSATION IF THE COUNTY  
 10 HAD NOT TAKEN SUCH ACTION OR TO SUPERSEDE --  
 11 AND THEN IN THE COMMENTS YOU STARTED GOING TO  
 12 7 AND 8. AND THAT WAS MY QUESTION.  
 13 SO IN ORDER TO -- ON 7, THE COUNTY ACTIONS  
 14 TAKEN ON THE BASIS OF THAT MAY BE REVERSED OR TERMINATED  
 15 AT THE EARLIEST POSSIBLE TIME.  
 16 THAT'S WHEN THE LEGISLATURE SAID I WANTED TO  
 17 MAKE SURE THAT IF SOMEONE TOOK THAT ACTION IN ERROR,  
 18 THEN I'M GOING TO REPEAL THIS CODE SECTION TO MAKE SURE  
 19 THAT IT DOESN'T HAVE ANY FURTHER IMPACTS, WINDFALLS,  
 20 OR -- OR -- OR UNFORESEEN ADVANTAGES TO SOMEONE WHO HAD  
 21 APPLIED IT.  
 22 AND I DO SEE -- YOU KNOW, YOU'VE MENTIONED  
 23 THAT THE COUNTY DID NOT THEN REVERSE IT. AND TO A  
 24 CERTAIN EXTENT, THAT MEANS THAT THEY AGREED THAT THEY  
 25 WANTED TO CONTINUE IT, I'M A -- YOU KNOW, IS THE ONLY

6 9

1 ASSUMPTION I CAN COME UP WITH.  
 2 OTHERWISE, THEY COULD HAVE REPEALED THEIR OWN  
 3 ORDINANCE. AND, AGAIN, IN THIS CASE THE ODD THING TO ME  
 4 IS THAT THE FLEXIBLE BENEFITS PAYMENTS BASICALLY DIDN'T  
 5 HAVE TO BE ANYTHING OTHER THAN ADDITIONAL SALARY BECAUSE  
 6 IF YOU DID NOTHING, IT WAS SALARY.  
 7 YOU DIDN'T HAVE TO ELECT TO DO ANYTHING. SO  
 8 I'M JUST TRYING TO UNDERSTAND HOW THAT WORKS.  
 9 BUT, YOU KNOW, IN READING THE 7 AND 8 AND --  
 10 AND I --  
 11 WHICH IS THE SAVINGS CLAUSE THAT YOU GUYS HAVE  
 12 TALKED ABOUT? WHAT PART OF THAT IS THIS SECTION? IF I  
 13 MIGHT EITHER THROUGH THE CEO OR THE ATTORNEY --  
 14 BOARD MEMBER ELEY: SECTION 2.  
 15 BOARD MEMBER FREIDENRICH: WHICH IS THE  
 16 SAVINGS CLAUSE?  
 17 MS. MATSUO: IT'S SECTION 2.  
 18 BOARD MEMBER FREIDENRICH: OKAY. SO IT'S THE  
 19 SAVINGS CLAUSE THE -- THE CHAPTER -- OKAY.  
 20 MS. MATSUO: STILL GO UP. STILL GO FURTHER UP  
 21 TO THE NEXT --  
 22 RIGHT THERE --  
 23 BOARD MEMBER FREIDENRICH: OKAY.  
 24 MS. MATSUO: THAT HIGHLIGHTED --  
 25 THANK YOU, BILL.

7 0

1 SECTION GAVE THE COUNTY AN ACTION IT COULD TAKE PURSUANT  
 2 TO THAT SECTION.  
 3 AND THE ACTION THE COUNTY COULD TAKE WAS TO  
 4 ADOPT SECTION 31 -- EXCUSE ME -- YEAH, 31460.1. SO THE  
 5 ACTION TAKEN BY THE COUNTY AND THE ACTION THAT IS  
 6 PRESERVED UNDER THE REPEAL SB-193 IS THE ACTION THE  
 7 COUNTY TOOK TO ADOPT THAT CODE SECTION.  
 8 IT'S VERY UNUSUAL. YOU DON'T FIND THIS KIND  
 9 OF LANGUAGE IN REPEAL SECTIONS VERY OFTEN OR REPEAL  
 10 LEGISLATION.  
 11 BUT IT'S CLEAR WHEN YOU CONNECT THE SECTION  
 12 AND WHAT THE COUNTY COULD OR COULDN'T DO ACCORDING TO  
 13 THAT SECTION.  
 14 THERE WAS ONLY ONE ACT THE COUNTY COULD DO,  
 15 AND THAT WAS TO ADOPT SECTION 31460.1.  
 16 THE COUNTY -- AT LEAST IN ORANGE COUNTY, THE  
 17 COUNTY WAS NOT THEN ADMINISTERING RETIREMENT BENEFITS.  
 18 THAT WAS THE COUNTY EMPLOYEE RETIREMENT SYSTEM WHICH IS  
 19 SEPARATE AND APART FROM THE ACTUAL BOARD OF SUPERVISORS.  
 20 AND, AGAIN, YOU LOOK AT THE SECTION. IT TALKS  
 21 ABOUT THE BOARD OF SUPERVISORS, NOT THE BOARD OF  
 22 RETIREMENT.  
 23 YOU LOOK AT THE INTENT OF THIS CODE SECTION.  
 24 THE INTENT WAS TO GIVE THE BOARD OF SUPERVISORS THE  
 25 AUTHORITY TO MAKE THE DECISION. THEY BASICALLY TOOK THE

7 2

1 SO YOU SEE --  
 2 BOARD MEMBER FREIDENRICH: OKAY. BUT SEE,  
 3 WHEN I READ THAT A LITTLE BIT -- WHEN I LOOKED AT THAT,  
 4 I THOUGHT IT WAS ONLY FOR THAT PERIOD THAT WAS THERE;  
 5 THAT THE PERIOD FROM THE BEGINNING WHEN THE -- THE  
 6 ORDINANCE WAS -- WAS PASSED TO WHEN THE GOVERNMENT -- OR  
 7 THE STATE REPEALED IT, IS THE VALIDITY OF THE ACTION BY  
 8 A COUNTY THAT SOMEONE COULDN'T COME BACK AND SUE YOU OR  
 9 DO SOMETHING DURING THAT PERIOD.  
 10 BUT YOU'RE SAYING THAT THAT IS -- AND, AGAIN,  
 11 I'M NOT THAT FAMILIAR WITH GOVERNMENT CODE, YOU KNOW, SO  
 12 I'M NOT AN EXPERT IN IT.  
 13 THAT THIS WOULD BE THE SAVINGS CLAUSE THAT  
 14 GOES OUT; THAT THE VALIDITY OF THE ACTION SHOULD  
 15 CONTINUE ON, NOT BE VOIDED AND NOT JUST PROTECT FOR  
 16 THOSE CHANGES THAT THE COUNTY MADE DURING THAT PERIOD  
 17 WHEN, IF PEOPLE HAD RETIRED AND IT WASN'T INCLUDED,  
 18 THOSE WERE STILL VALID. DURING THAT PERIOD OF NINE  
 19 MONTHS, THAT THOSE WERE STILL VALID.  
 20 SO MAYBE YOU'D LIKE TO COMMENT ON THAT FOR ME.  
 21 MS. MATSUO: CAN I RESPOND, MR. --  
 22 MS. FREIDENRICH?  
 23 BOARD MEMBER FREIDENRICH: YES, DEFINITELY.  
 24 MS. MATSUO: BASICALLY, YOU HAVE TO LOOK AT  
 25 THE CODE SECTION, I BELIEVE, THE 31460.1. AND THAT CODE

7 1

1 DECISION AWAY FROM THE RETIREMENT SYSTEM.  
 2 SO TO SAY THAT IN THE REPEAL THE COUNTY AND  
 3 THE RETIREMENT SYSTEM IS ONE AND THE SAME, IS JUST --  
 4 JUST UNBELIEVABLE.  
 5 I MEAN, BECAUSE THE WHOLE REASON -- THE WHOLE  
 6 PURPOSE BEHIND THIS SECTION WAS TO SEPARATE OUT WHETHER  
 7 THE BOARD OF SUPERVISORS HAS THE AUTHORITY OR WHETHER  
 8 THE RETIREMENT SYSTEM HAS THE AUTHORITY.  
 9 AND THIS STATUTE GAVE THE SUPERVISORS THE  
 10 AUTHORITY.  
 11 MR. MORELL: CAN I JUST QUICKLY --  
 12 CHAIRMAN DEWANE: LET -- LET --  
 13 BOARD MEMBER FREIDENRICH: RIGHT. BUT THEN  
 14 THE SUPERVISORS -- THEN THEY SAID, WELL, THIS WAS THE  
 15 WRONG THING TO DO AND THEY REPEALED IT. SO THAT'S WHERE  
 16 I'M TRYING TO UNDERSTAND.  
 17 MR. MORELL: CAN I --  
 18 MS. MATSUO: THEY DIDN'T SAY IT WAS THE WRONG  
 19 THING TO DO. THEY SAID IT WAS BEING MISUNDERSTOOD.  
 20 MR. MORELL: OKAY. CAN I --  
 21 BOARD MEMBER FREIDENRICH: RIGHT. AND I'M  
 22 TRYING TO UNDERSTAND WHAT IS THAT UNDERSTANDING THAT  
 23 SHOULD HAVE BEEN THERE.  
 24 THAT'S WHAT I'M TRYING TO REALLY UNDERSTAND IS  
 25 WERE THEY REALLY -- BECAUSE HERE IT DOES SAY THAT

7 3

1 COMPENSATION SHALL NOT INCLUDE CASH PAYMENTS FOR THOSE.  
 2 AND IN THIS CASE, AGAIN, WHETHER IT WAS A  
 3 PARTIAL ELECTION --  
 4 BUT, YEAH. I DO SEE THAT YOU ELECTED TO  
 5 PARTICIPATE FOR THOSE THREE YEARS BECAUSE YOU DIDN'T  
 6 JUST DO NOTHING AND RECEIVE THE OBP. YOU DID HAVE TO DO  
 7 SOME ELECTION TO SAY, I WANT TO APPLY THE 700, THE 2500,  
 8 AND 1100.  
 9 SO, YOU KNOW, I -- I DO SEE THAT. BUT IS THEN  
 10 THE PORTION THAT WASN'T ELECTED, YOU KNOW, WHERE IT  
 11 EXCEEDS THE SALARY BECAUSE IT'S NO LONGER, YOU KNOW --  
 12 ONCE YOU SEND IT TO THE PLAN, IT REALLY IS KIND OF GONE.  
 13 IF YOU DON'T HAVE ANY -- IF YOU HAD NO RECEIPTS, YOU  
 14 WOULD LOSE THAT AMOUNT.  
 15 SO THEORETICALLY, I -- I -- YOU KNOW, I LOOK  
 16 TO SAY ONCE YOU PARTICIPATE, YOU'VE PUT IT INTO A  
 17 DIFFERENT BUCKET EVEN THOUGH YOU STILL ARE GETTING CASH  
 18 FROM IT.  
 19 IF YOU HAD NOTHING, YOU WOULDN'T HAVE GOTTEN  
 20 CASH. BUT THE LAW CAN'T -- YOU KNOW, I THINK THAT  
 21 THERE'S STILL THAT LINE BETWEEN THEM.  
 22 MR. MORELL: CAN I JUST --  
 23 BOARD MEMBER FREIDENRICH: BUT I'M TRYING TO  
 24 UNDERSTAND WHAT THE -- YOU KNOW, WHY THEY WOULD HAVE,  
 25 YOU KNOW -- AND THAT'S WHERE THAT ANALYSIS IS HELPFUL

7 4

1 IS, WAS IT REALLY AN ERROR OR WAS IT THIS MISCONSTRUING.  
 2 AND DID ANYONE ELSE IN THE STATE HAVE THE --  
 3 IS ORANGE COUNTY THE ONLY COUNTY THAT DID THIS AND --  
 4 AND CONTINUES TO FOLLOW THROUGH?  
 5 OR ARE THERE -- OR WERE THERE OTHER COUNTIES  
 6 THAT WE CAN LOOK AT THAT WOULD HAVE -- TO SEE HOW THEY  
 7 CONSTRUED IT?  
 8 MS. MATSUO: WELL, I'M NOT SURE ABOUT WHAT  
 9 OTHER COUNTIES DID OR HOW MANY OTHER COUNTIES DID.  
 10 I KNOW THAT LOS ANGELES COUNTY, THE BOARD OF  
 11 SUPERVISORS DID NOT ADOPT THIS CODE SECTION; AND,  
 12 THEREFORE, LACERA INCLUDED IT, ONLY THE CASH BENEFITS,  
 13 INTO THE COMPENSATION.  
 14 SUBSEQUENTLY, THOUGH, THERE ARE OTHER STATUTES  
 15 THAT WERE AMENDED THAT ALLOWED THE RETIREMENT SYSTEM --  
 16 BOARD MEMBER FREIDENRICH: YES.  
 17 MS. MATSUO: -- AND LACERA VERY DIRECT, VERY  
 18 SPECIFIC -- L.A. HAS A LOT OF SPECIAL CODE SECTIONS THAT  
 19 APPLY ONLY TO IT.  
 20 BUT THE LEGISLATURE ADOPTED -- OR ENACTED, I  
 21 SHOULD SAY, A COUPLE OTHER SECTIONS THAT ALLOWED THE  
 22 RETIREMENT SYSTEM TO LIMIT THE INCLUSION OF OBP CASH  
 23 BENEFITS.  
 24 MR. MORELL: IF -- IF I MAY --  
 25 BOARD MEMBER FREIDENRICH: UH-HUH.

7 5

1 CHAIRMAN DEWANE: WHAT IS RELEVANT TODAY IS  
 2 WHAT WAS DONE IN ORANGE COUNTY, NOT LOS ANGELES.  
 3 MS. MATSUO: CORRECT.  
 4 BOARD MEMBER FREIDENRICH: RIGHT. I AGREE.  
 5 MR. MORELL: I AGREE. BUT I BELIEVE -- I  
 6 BELIEVE THERE IS ONE OTHER COUNTY. I THINK THE ANSWER  
 7 TO HER QUESTION --  
 8 CHAIRMAN DEWANE: GO AHEAD.  
 9 MR. MORELL: MY UNDERSTANDING IS THAT THERE  
 10 WAS ONE OTHER COUNTY. I BELIEVE IT WAS VENTURA COUNTY,  
 11 OUT OF THE WHOLE STATE, THAT -- THAT ADOPTED THIS  
 12 PROCEDURE THAT ORANGE COUNTY DID.  
 13 AND I HAVE TRIED TO FIND OUT. I DID MAKE SOME  
 14 EFFORT. I'VE BEEN NOT ABLE TO FIND OUT HOW ORANGE --  
 15 HOW VENTURA COUNTY HAS -- HAS TREATED THIS ISSUE.  
 16 FEEL FREE TO DO THAT. I -- I HAVE  
 17 NO OBJECTION. I MEAN --  
 18 BOARD MEMBER FREIDENRICH: WELL, IT IS JUST  
 19 A -- IT'S REALLY NOT PART OF OUR COUNTY, BUT I -- I  
 20 WAS -- YOU KNOW, IT'S JUST INFORMATION. AND, CERTAINLY,  
 21 WE AT THE COUNTY MADE THE DECISION. IT JUST -- IT  
 22 WAS --  
 23 YOU KNOW, I DIDN'T KNOW IF 90 PERCENT OF THEM  
 24 HAD. AND IT SOUNDS LIKE IT WAS VERY FEW, IF ANY. MAYBE  
 25 ONE OTHER MAY HAVE DONE IT.

7 6

1 MR. MORELL: BUT THIS IS AN ISSUE OF  
 2 APPLICATION OF STATE LAW. AND, PRESUMABLY, IF THEY HAVE  
 3 A VIEW OF WHAT THEIR VIEW OF THE STATE LAW IS, IT MIGHT  
 4 BE OF INTEREST. THAT'S ALL.  
 5 CHAIRMAN DEWANE: SHARI, DO YOU HAVE ANY OTHER  
 6 QUESTIONS?  
 7 BOARD MEMBER FREIDENRICH: RIGHT. SO I THINK  
 8 THE LAST QUESTION I HAVE -- SO IF WE CAN GO BACK TO THAT  
 9 7 AND 8 ON THE -- ON THE -- ON THE LAW AGAIN, THAT ONE  
 10 LAST SECTION, IF I COULD PUT THAT UP ON THE SCREEN.  
 11 THANK YOU VERY MUCH.  
 12 OKAY. SO IF WE GO DOWN TO 7 AND 8 -- LET'S  
 13 SEE. I JUST WANT TO MAKE SURE I'VE GOT ALL MY QUESTIONS  
 14 ANSWERED THERE.  
 15 SO -- OKAY. SO ANY REVERSAL OR AFTER THE  
 16 EFFECTIVE DATE OF COUNTY ACTIONS TAKEN ON THE BASIS OF  
 17 MISCONSTRUCTION, WOULD MERELY RESTRICT COUNTY TO THOSE  
 18 GAINS REASONABLY EXPECTED FROM THEIR COUNTY RETIREMENT  
 19 AND WITHHOLD -- ADVANTAGES WHICH NO RELATIVE -- MAINTAIN  
 20 PURSUANT TO THE CERL, WOULD NOT CONSTITUTE IMPAIRMENT OF  
 21 THE COUNTY CONTRACT.  
 22 SO WHEN I LOOK AT NUMBER 8 -- SO IN THIS CASE  
 23 THERE WASN'T A REVERSAL OR A TERMINATION BY THE BOARD  
 24 AFTER THE EFFECTIVE DATE.  
 25 SO IF I KIND OF READ IT THE OTHER WAY --

7 7

1 BECAUSE THEY'RE SAYING, IF THERE WAS A REVERSAL, IT  
2 WOULD -- THIS IS WHAT THEY'RE SAYING WOULD HAPPEN.

3 SO IF OUR BOARD HAD TAKEN THE ACTION TO TAKE  
4 IT AWAY, THEN IT WOULD HAVE RESTRICTED COUNTY EMPLOYEES  
5 TO THOSE GAINS -- ARE EXPECTED TO BE AND WITH -- WHICH  
6 BEAR NO RELATIVE.

7 THE THEORY AND OBJECTIVE OF THE COUNTY  
8 RETIREMENT SYSTEM IS MAINTAINED PURSUANT TO THE COUNTY  
9 CERL AND WOULD NOT REQUIRE AN UNCONSTITUTIONAL  
10 IMPAIRMENT OF THE COUNTY RETIREMENT CONTRACT.

11 SO I'M JUST -- IT -- IT -- IS THERE SOMEONE  
12 THAT'S FROM THE COUNTY OR FROM THE OCERS THAT COULD SAY,  
13 IF WE REVERSE THAT, WHAT WOULD THAT SAY? WHAT DOES THAT  
14 MEAN?

15 DOES THAT MEAN THAT -- YOU KNOW, IF THEY'RE  
16 SAYING IF YOU DID REVERSE, THIS IS WHAT WOULD HAPPEN.  
17 SO IF YOU DIDN'T REVERSE, THEN WOULD THAT ALLOW THEM TO  
18 CONTINUE TO NOT HAVE THESE THINGS EITHER?

19 MS. MATSUO: MS. FREIDENRICH, I'M NOT 100  
20 PERCENT SURE THAT I UNDERSTAND YOUR QUESTION. BUT I  
21 BELIEVE, PERHAPS, PART OF THE ANSWER IS IF, EVEN TODAY,  
22 THE BOARD OF SUPERVISORS WERE TO REPEAL ITS RESOLUTION  
23 90-1551 --

24 BOARD MEMBER FREIDENRICH: UH-HUH.

25 MS. MATSUO: -- THEN I BELIEVE THAT WOULD END

7 8

1 AND IT -- AND, YOU KNOW, IT IS THAT  
2 INTERPRETATION OF HOW DOES THAT, YOU KNOW, FIND THAT.

3 OKAY. WELL, I THINK -- I -- I APPRECIATE YOUR  
4 TAKING THE TIME TO ANSWER MY QUESTIONS SO I COULD  
5 CLARIFY THE INFORMATION I NEEDED.

6 THANK YOU.

7 MS. MATSUO: YOU'RE WELCOME.

8 CHAIRMAN DEWANE: THANK YOU VERY MUCH, SHARI.  
9 SO I JUST -- IS THERE ANYBODY ELSE WHO WOULD  
10 LIKE TO HOLD FORTH ON THE MATTER?

11 I JUST HAVE -- I HAVE A COUPLE QUESTIONS REAL  
12 QUICK. AND I'M JUST GOING TO ASK MS. RATTO.

13 FROM MY PRACTICAL EXPERIENCE IN LIFE, THERE  
14 ARE THREE ELEMENTS TO THE LAW; THERE'S THE LETTER, THE  
15 INTENT, AND THE SPIRIT OF THE LAW.

16 AND FROM THE PERSPECTIVE SPEAKING ON BEHALF OF  
17 THE INSTITUTION OF OCERS AND YOURS AS A LAWYER, ARE YOU  
18 CONFIDENT THAT THE STAFF AT OCERS PROPERLY EXCLUDED THE  
19 OBP PAYMENTS FROM CALCULATING MR. MORELL'S FINAL  
20 COMPENSATION UNDER THE CERL PROVISIONS?

21 GENERAL COUNSEL RATTO: YES, I AM.

22 CHAIRMAN DEWANE: MR. LEIDERMAN, DO YOU CONCUR  
23 WITH MS. RATTO?

24 MR. LEIDERMAN: YES, I DO.

25 CHAIRMAN DEWANE: THANK YOU VERY MUCH.

8 0

1 THE APPLICATION OF SECTION 31460.1 IN --

2 BOARD MEMBER FREIDENRICH: UH-HUH.

3 MS. MATSUO: -- ORANGE COUNTY.

4 THAT'S A POSSIBILITY. AND THEN IN THAT CASE,  
5 I THINK A REASONABLE INTERPRETATION OF SECTION 8 IS THAT  
6 ANY EMPLOYEE WHO RECEIVED A RETIREMENT, WHILE IT WAS  
7 STILL PENDING, WOULDN'T HAVE TO BE RECALCULATED. BUT  
8 IT'S REAL SPECULATION BECAUSE --

9 BOARD MEMBER FREIDENRICH: RIGHT. RIGHT.

10 MS. MATSUO: -- WE DON'T HAVE ANY CASE LAW --

11 BOARD MEMBER FREIDENRICH: IS JUST --

12 MS. MATSUO: -- OR ACTUAL SCENARIOS. THIS IS  
13 NOT WHAT IS BEFORE US NOW.

14 BOARD MEMBER FREIDENRICH: RIGHT. RIGHT. NO.

15 I AGREE THAT THEY AREN'T DOING -- I'M JUST TRYING TO  
16 UNDERSTAND WHAT WAS THE INTENT AND THAT'S WHERE THESE  
17 ANALYSIS NOTES DEFINITELY DO HELP.

18 AND -- AND I DO SEE IN NUMBER 6 THAT, YOU  
19 KNOW, IT'S TO ACCORD TO EACH COUNTY BOARD OF  
20 SUPERVISORS, AT THEIR OPTION, THE POWER TO INCLUDE OR  
21 PRECLUDE FROM INCLUDING THOSE AND TO SUPERSEDE ANY  
22 PREVIOUS DECISION OF THE COUNTY RETIREMENT BOARD.

23 IF THE BOARD WAS INCLUDING THEM, THIS ALLOWED  
24 THE COUNTY BOARD TO BASICALLY SAY, NO, WE ARE NOT DOING  
25 THEM.

7 9

1 WITH THAT SAID, MR. MORELL, I THINK WE'VE GOT  
2 A FAIR HEARING IN THE MATTER; THAT YOU'VE ENGAGED THE  
3 BOARD MEMBERS AND THE STAFF HERE IN A DELIBERATIVE  
4 MANNER THAT HAS EXCEEDED ANY -- IN MY EXPERIENCE AT  
5 THE -- AT THE PENSION PLAN, HAS EXCEEDED THAT OF ANY  
6 OTHER PERSON WHO'S APPROACHED THE BOARD.

7 AND I THANK YOU. IT'S BEEN AN INTERESTING,  
8 YOU KNOW, PROCESS TO GO THROUGH. AND I'M ENCOURAGED  
9 THAT THERE ARE SO MANY EXPERTS THAT HAVE ANALYZED EVERY  
10 ASPECT OF THIS TO MAKE SURE THAT WE ARE DOING THE RIGHT  
11 THING.

12 SO I AM GOING TO MAKE A MOTION IN ACCORDANCE  
13 WITH THE INSTRUCTIONS OF THE LOS ANGELES COUNTY SUPERIOR  
14 COURT IN THIS MATTER.

15 THE BOARD HAS, SEPARATE AND APART FROM THE  
16 2002 SETTLEMENT AGREEMENT, NOW FULLY RECONSIDERED THE  
17 APPLICATION OF JAMES MORELL FOR A RECALCULATED  
18 RETIREMENT ALLOWANCE.

19 AND THAT WE HAVE HEARD MR. MORELL'S  
20 CONTENTIONS THAT OCERS IMPROPERLY EXCLUDED THE OPTIONAL  
21 BENEFIT PAYMENT -- PLAN PAYMENTS FROM THE CALCULATION OF  
22 HIS FINAL COMPENSATION.

23 AND THAT WE MAKE A FINDING THAT OCERS PROPERLY  
24 EXCLUDED ALL OBP PAYMENTS FROM THE CALCULATION OF  
25 MR. MORELL'S FINAL COMPENSATION UNDER THE CERL

8 1

1 PROVISIONS AND RELATED LAWS IN EFFECT WHEN MR. MORELL  
 2 RETIRED IN 2014.  
 3 IS THERE A SECOND TO MY MOTION?  
 4 BOARD MEMBER PREVATT: MR. CHAIR, I'LL SECOND.  
 5 CHAIRMAN DEWANE: THANK YOU, MR. PREVATT. IS  
 6 THERE ANY --  
 7 MR. MORELL: MAY I ASK A PROCEDURAL POINT  
 8 HERE?  
 9 CHAIRMAN DEWANE: LET ME ASK THE BOARD BEFORE  
 10 YOU -- BEFORE YOU HOLD FORTH.  
 11 IS THERE ANY FINAL DISCUSSION HERE?  
 12 SEEING NO TAKERS, MR. MORELL, YES.  
 13 MR. MORELL: YEAH. WHAT -- YOU REFER TO THAT  
 14 AS A FINDING. IT'S ACTUALLY A LEGAL CONCLUSION. AND I  
 15 WOULD POINT OUT THAT THE -- THE COURT -- SUPERIOR COURT  
 16 ALSO ORDERED -- AND A PART OF THAT -- PART OF THE BASIS  
 17 FOR HER NOT BEING ABLE TO FULLY ADJUDICATE THE MATTER  
 18 WAS THE BOARD HAD NOT MADE FINDINGS ON CERTAIN ISSUES,  
 19 BUT PARTICULARLY IN RELATION TO THE ISSUE OF THE  
 20 ELECTION QUESTION UNDER -- UNDER THE STATUTE.  
 21 FOR EXAMPLE, WAS THERE AN ELECTION? IF SO,  
 22 WHAT IT DID APPLY TO AS -- AS ONE OF YOUR COLLEAGUES  
 23 WAS -- WAS GOING OVER WHETHER IT APPLIES TO ONLY PRETAX  
 24 MONEY OR THE POST-TAX MONEY.  
 25 ALL THESE THINGS REQUIRE FINDINGS. THIS IS AN

8 2

1 ADMINISTRATIVE PROCEEDING. IT'S -- IT'S JUST SIMPLY NOT  
 2 GOOD ENOUGH TO -- TO JUST MAKE A CONCLUSION SAYING  
 3 APPLICATION DENIED OR SOMETHING.  
 4 THERE ARE FACTUAL FINDINGS THAT NEED TO BE  
 5 MADE IN CONNECTION WITH THIS PROCEEDING IF YOU ARE GOING  
 6 TO -- TO DENY AGAIN.  
 7 CHAIRMAN DEWANE: THANK YOU, MR. MORELL. IN  
 8 MY MIND THE LANGUAGE I USED WAS RELATIVELY BROAD, BUT I  
 9 AM GOING TO ASK MS. RATTO.  
 10 IS THE LANGUAGE I USED ENCOMPASSING ENOUGH TO  
 11 ADDRESS THE CONCERNS MR. MORELL HAS JUST RAISED?  
 12 GENERAL COUNSEL RATTO: MY SUGGESTION, AFTER  
 13 WE HAVE A VOTE ON THE MOTION WHICH CARRIES, WOULD BE TO  
 14 ASK THE CHAIR TO DIRECT STAFF TO PREPARE WRITTEN  
 15 PROPOSED FINDINGS AND A DECISION FOR THE BOARD'S  
 16 CONSIDERATION, AND TO SHARE THE FINDINGS -- PROPOSED  
 17 FINDINGS AND DECISION WITH MR. MORELL, GIVE HIM AN  
 18 OPPORTUNITY TO SUBMIT CHANGES AND OBJECTIONS, AND THEN  
 19 HAVE BOTH OF THOSE DOCUMENTS PRESENTED TO THE BOARD FOR  
 20 CONSIDERATION AT ITS JANUARY 18 MEETING.  
 21 SO WE CAN INCLUDE IN THOSE PROPOSED FINDINGS  
 22 ALL OF THE DETAILS UPON WHICH THE ARGUMENTS OF THE  
 23 PARTIES WERE BASED.  
 24 MR. MORELL: AND ON -- ON WHICH YOUR DECISION,  
 25 WHATEVER IT IS, IS BASED.

8 3

1 IN OTHER WORDS, WHATEVER YOUR DECISION IS, IT  
 2 HAS TO BE SUPPORTED BY FACTUAL FINDINGS ABOUT WHAT  
 3 OCCURRED HERE AND -- AND NOT JUST CONCLUSIONS ABOUT  
 4 WHAT -- WHAT YOU DO WITH IT. YES.  
 5 CHAIRMAN DEWANE: VERY GOOD.  
 6 MR. MORELL: I'M IN AGREEMENT WITH THAT  
 7 PROCEDURE.  
 8 CHAIRMAN DEWANE: VERY GOOD.  
 9 IS THERE ANY OTHER FINAL DISCUSSION?  
 10 SEEING NONE, WOULD YOU PLEASE CALL THE ROLL?  
 11 RECORDING SECRETARY CLEGERG: MR. PACKARD?  
 12 BOARD MEMBER PACKARD: YES.  
 13 RECORDING SECRETARY CLEGERG: MR. PREVATT?  
 14 BOARD MEMBER PREVATT: YES.  
 15 RECORDING SECRETARY CLEGERG: MR. LINDHOLM?  
 16 BOARD MEMBER LINDHOLM: YES.  
 17 RECORDING SECRETARY CLEGERG: MR. OATES?  
 18 BOARD MEMBER OATES: YES.  
 19 RECORDING SECRETARY CLEGERG: MR. HIDALGO?  
 20 BOARD MEMBER HIDALGO: YES.  
 21 RECORDING SECRETARY CLEBERG: MR. ELEY?  
 22 BOARD MEMBER ELEY: YES.  
 23 RECORDING SECRETARY CLEGERG: MS. FREIDENRICH?  
 24 BOARD MEMBER FREIDENRICH: AYE.  
 25 RECORDING SECRETARY CLEGERG: MS. TAGALOA?

8 4

1 BOARD MEMBER TAGALOA: YES.  
 2 RECORDING SECRETARY CLEGERG: CHAIR DEWANE?  
 3 CHAIRMAN DEWANE: YES.  
 4 THANK YOU VERY MUCH. THAT MOTION CARRIES.  
 5 THANK YOU, MR. MORELL.  
 6 GENERAL COUNSEL RATTO: IF I MIGHT --  
 7 CHAIRMAN DEWANE: YES.  
 8 GENERAL COUNSEL RATTO: I WOULD JUST LIKE TO  
 9 GET THE -- THE TIME LINE HERE BECAUSE WE DO HAVE A DUE  
 10 DATE BACK TO THE COURT WHERE WE HAVE TO SUBMIT  
 11 EVERYTHING BACK TO THE COURT TO SATISFY THE COURT THAT  
 12 THIS BOARD HAS ACTED IN ACCORDANCE WITH THE WRIT AND THE  
 13 COURT'S INSTRUCTIONS.  
 14 SO I WOULD PROPOSE THAT STAFF'S WRITTEN  
 15 PROPOSED FINDINGS AND DECISION BE SHARED WITH MR. MORELL  
 16 BY DECEMBER 22ND, CLOSE OF BUSINESS.  
 17 THAT MR. MORELL WOULD THEN HAVE UNTIL CLOSE OF  
 18 BUSINESS ON JANUARY 4TH TO SUBMIT CHANGES AND OBJECTIONS  
 19 TO THE PROPOSED FINDINGS AND DECISION.  
 20 THEN STAFF WILL DELIVER BOTH OF THOSE  
 21 DOCUMENTS, THE PROPOSED FINDINGS FROM STAFF AND -- AND  
 22 MR. MORELL'S CHANGES AND/OR OBJECTIONS WOULD BE  
 23 DELIVERED TO THE BOARD ON OR BEFORE JANUARY 7TH.  
 24 AND THEN THE BOARD WILL CONSIDER THOSE AT ITS  
 25 JANUARY 18 MEETING.

8 5

1 MR. MORELL: I HAVE NO OBJECTIONS TO THAT.  
 2 CHAIRMAN DEWANE: VERY GOOD. AND I SEE  
 3 NODDING HEADS FROM THE BOARD IN CONCURRENCE WITH YOUR  
 4 SUGGESTION.  
 5 GENERAL COUNSEL RATTO: THANK YOU. SO I WILL  
 6 TAKE THAT AS DIRECTION FROM THE BOARD CHAIR.  
 7 THANK YOU VERY MUCH.  
 8 CHAIRMAN DEWANE: PERFECT. THANK YOU VERY  
 9 MUCH.  
 10 OKAY. THIS CONCLUDES THE MORELL MATTER.  
 11  
 12 (WHEREUPON AT 11:40 A.M. THE PROCEEDINGS  
 13 TAKEN THROUGH ZOOM VIDEO COMMUNICATIONS  
 14 WERE CONCLUDED.)  
 15 --000--  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

8 6

1 CERTIFICATE  
 2 OF  
 3 CERTIFIED SHORTHAND REPORTER  
 4 \* \* \* \*

5  
 6  
 7 THE UNDERSIGNED CERTIFIED SHORTHAND REPORTER  
 8 OF THE STATE OF CALIFORNIA DOES HEREBY CERTIFY:  
 9 THAT THE FOREGOING ORANGE COUNTY BOARD OF  
 10 RETIREMENT PROCEEDINGS WERE TAKEN BEFORE ME THROUGH ZOOM  
 11 VIDEO COMMUNICATIONS AT THE TIME AND PLACE THEREIN SET  
 12 FORTH;  
 13 THAT ALL STATEMENTS MADE AT THE TIME OF THE  
 14 ORANGE COUNTY BOARD OF RETIREMENT PROCEEDINGS WERE  
 15 RECORDED STENOGRAPHICALLY BY ME AND WERE THEREAFTER  
 16 TRANSCRIBED, SAID TRANSCRIPT BEING A TRUE AND CORRECT  
 17 COPY OF THE PROCEEDINGS THEREOF.  
 18 IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME,  
 19 THIS DATE: DECEMBER 15, 2021  
 20  
 21  
 22  
 23

24 VALERIE DESBOROUGH, CERTIFIED-----  
 25 SHORTHAND REPORTER NO. 12317 IN  
 AND FOR THE STATE OF CALIFORNIA 8 7



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION IN THE MATTERS OF THE BENEFIT APPEALS OF MEMBERS SZEWCZYK, ROBERT AND MORIKAWA, RODNEY**

---

### **Recommendation**

In the *Matters of Robert Szewczyk and Rodney Morikawa*, Staff recommends the Board exercise its authority pursuant to subdivision (d) of section 31534 of the California Government Code and:

- (1) Set this matter for hearing before itself;
- (2) Accept the record before the referee, together with additional evidence, written briefing and argument from the parties in accordance with a schedule determined by the Board; and
- (3) Consider all such testimony, evidence, briefing and argument at a future meeting of the Board at which time the Board will decide the matter as if it had not been referred to the referee.

### **Alternatives**

California Government Code section 31534 outlines the Board's options upon receiving proposed findings of fact and recommendations of a hearing officer. Section 31534 states in pertinent part as follows:

Upon receiving the proposed findings of fact and recommendations of the referee, the board may:

- (a) Approve and adopt the proposed findings and the recommendations of the referee,  
or
- (b) Require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon receipt thereof the board shall take such action as in its opinion is indicated by such evidence, or
- (c) Refer the matter back with or without instructions to the referee for further proceedings, or
- (d) Set the matter for hearing before itself. At such hearing, the board shall hear and decide the matter as if it had not been referred to the referee.

### **Background**

Robert Szewczyk and Rodney Morikawa (collectively, "Applicants") are retired Deputy Sheriffs II, who retired from the Orange County Sheriffs' Department ("OCSD") in March 2018. As of their retirement dates, the Applicants had been assigned to the Theo Lacy Facility in the Correctional Medical Services Unit. This matter began in 2018 with a request by the Applicants for a written review of OCERS Staff's determination that certain

overtime pay received by the Applicants for working an extra half-hour every other Wednesday (“Overtime Pay”) should be excluded from “compensation earnable” when calculating the Applicants’ retirement allowances. Pursuant to the OCERS Board’s “Adjudication Policy and Administrative Hearing Rules” applicable to requests for hearing filed with OCERS between June 1, 2018 and August 17, 2020, OCERS’ CEO, acting through his designee, provided the written review and upheld Staff’s determination of the Applicants’ retirement allowances. On July 18, 2019, the Applicants filed a timely request for an administrative hearing on the issue of OCERS’ exclusion of the Overtime Pay from “compensation earnable” when calculating the Applicants’ retirement allowances.

An administrative hearing was held on April 26, 27 and 29, 2021 before Hearing Officer Duane Bennett. The Applicants were represented by Jacob A. Kalinski of Rains Lucia Stern St. Phalle & Silver, P.C. and OCERS was represented by OCERS Staff Attorney, Dawn Matsuo. On November 9, 2021, the Hearing Officer issued his Proposed Findings of Fact, Conclusions and Recommendations (“Recommendations”) and recommended:

- (1) That the appeals of the Applicants be **Granted**, and that the 6FE overtime compensation at issue be regarded as compensation earnable for purposes of calculating the retirement benefits of Applicants Robert Szewczyk and Rodney Morikawa.
- (2) ... [T]hat the final calculation allowances of Applicants Robert Szewczyk and Rodney Morikawa be adjusted retroactively to the dates of their respective retirements.

The aforementioned recommendations hinge upon a proposed finding of the Hearing Officer that purports to create a **new hybrid classification of OCSD employees – Deputy Sheriff Assigned to Jail Operations** – comprised of both Deputy Sheriffs I and Deputy Sheriffs II.

#### **Basis for Staff’s Recommendation**

Staff’s recommendation that the Board reject the Recommendations and exercise its authority pursuant to subdivision (d) of section 31534 of the California Government Code is based on at least the following reasons (Staff reserves the right to raise additional arguments in OCERS’ brief and oral remarks).

First, the purported creation of a new hybrid classification of Deputy Sheriff Assigned to Jail Operations and the proposed finding of the Hearing Officer that the Applicants are members of that classification is in direct conflict with the decision made by the Board at its regularly scheduled meeting on May 18, 2020, in a different matter titled *In the Matter of Robert Szewczyk, Jesse Oller and Robert Morikawa* (the “Applicants’ First Case”) involving these same two Applicants and one other OCERS member.

In the Applicants’ First Case, the Applicants sought to have pay associated with working a half-hour extension of each regularly scheduled work shift included in their “compensation earnable.” As in the current matter before the Board, in the Applicants’ First Case, the Applicants contended that the extra time worked by them was worked by everyone in their same grade or class. On March 26, 2020, Hearing Officer Jane Kearl in the Applicants’ First Case issued her Summary of Evidence, Findings of Fact, Conclusions of Law, and Recommendations and concluded, among other things, that (1) the Applicants have the class and grade of



Deputy Sheriff II; and (2) that other Deputy Sheriffs II working outside the Theo Lacy Facility in the Correctional Medical Services Unit did not work the half-hour shift extension. On May 18, 2020, the Board approved and adopted the findings and recommendations of the Hearing Officer in the Applicants' First Case; and by doing so, **the Board determined that the Applicants are in the grade and class of Deputy Sheriff II.**

Second, the Recommendations' purported creation of a new hybrid classification of OCSD employees conflicts with the action taken by the Board at its March 15, 2021 meeting and with the Compensation Earnable Policy adopted by the Board on May 17, 2021. At its March 15, 2021 meeting, the Board concluded that in determining the grade/class/rate of pay of employees of Departments within Orange County on and after January 1, 2013, OCERS will look to the grades/classes/rates of pay enumerated in the applicable MOU, the County's official list of job classifications at <https://www.ocgov.com/gov/hr/classification/specifications>, and other official County-approved documents that are binding on the parties and that establish employee grades, classes or rates of pay. The definition of grade/class/rate of pay is critical to the Board's Compensation Earnable Policy, as mandated by the Supreme Court decision in *Alameda*, and which defines Normal Working Hours as follows:

**Definition of Normal Working Hours.**

Normal Working Hours are hours that (i) are required to be worked as part of the employee's regular duties; (ii) are **ordinarily worked during the period in question by all other members in the same grade/class/rate of pay as the employee; and** (iii) are not and cannot be voluntarily worked by the employee. "Ordinarily worked" does not include time served on a temporary or emergency basis. (Emphasis added.)

Third, the Recommendations' purported creation of a new hybrid classification of OCSD employees comprised of both Deputy Sheriffs I and Deputy Sheriffs II also ignores the requirement of "same rate of pay" used by Government Code section 31461(a)<sup>1</sup>. Clearly Deputy Sheriffs I and Deputy Sheriffs II do not earn the same rate of pay.

Finally, the Recommendations erroneously state that a single-author bill (AB 428) that was introduced in the Legislature last session and that has not passed through the Legislature (or any of its committees), much less been signed into law, somehow demonstrates the "intent of the Legislature" on the subjects of overtime and grade/classification/rate of pay.

For all of the aforementioned reasons, Staff urges the Board to reject the Recommendations, exercise its authority pursuant to subdivision (d) of section 31534 of the California Government Code, and set this matter for hearing before the Board.

**Scheduling and Process**

---

<sup>1</sup> Subdivision (a) of section 31461 of the Government Code states in pertinent part: "(a) "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and **at the same rate of pay.**" (Emphasis added.)

If the Board adopts Staff's recommendation, Staff suggests the Board:

- Set the matter for hearing before itself at its March 21, 2022 meeting and at such time decide the matter as if it had not been referred to a Hearing Officer;
- Accept the administrative records presented before the Board and the two Hearing Officers and schedule the exchange of written briefs and additional evidence submitted by the Applicants and OCERS on or before February 18, 2022;
- In lieu of testimony at the March 21, 2022 meeting, accept the transcript of hearing that was held on April 26, 27 and 29, 2021 before Hearing Officer Bennett; and
- At the hearing on March 21, 2022, consider the transcripts of the hearings before the two Hearing Officers, the administrative records, the parties' briefs and any additional evidence submitted with the briefs, and oral argument by both parties.
- Render its decision on or after March 21, 2022.

**Submitted by:**



SJ-Approved

---

Suzanne Jenike  
Assistant CEO, External Operations

**FILED**  
Orange County Employees  
Retirement System  
**NOV 9 2021**  
By B. Singleton, Clerk  
of the Hearing Officers

ORANGE COUNTY  
EMPLOYEES' RETIREMENT SYSTEM  
BOARD OF RETIREMENT

|  |  |
|--|--|
| <p>In the Matters of:</p><br><br><p>ROBERT SZEWCZYK and RODNEY<br/>MORIKAWA,<br/>APPLICANTS.</p> | <p>) Case Nos. 0014-106996, 0012-119403<br/>)<br/>) Proposed Findings of Fact<br/>) Conclusions and Recommendation<br/>)<br/>) Hearing Dates: April 26, 27, 29, 2021<br/>)<br/>) Duane E. Bennett, Hearing Officer</p> |
|--|--|

---

**INTRODUCTION**

The issue presented in these appeals is whether certain overtime pay received by the Applicants, coded 6FE, should be regarded as “compensation earnable” and included in their final compensation when calculating the Applicants’ retirement allowances.

The Applicants filed benefits appeals with OCERS regarding the calculation of their benefits, that was denied. This instant matter followed, and was assigned to Hearing Officer Duane E. Bennett.

The Applicants have requested that .5 hours of overtime be included in their compensation earnable, in that it was overtime required to be worked by approximately 90% of deputies assigned to the Sheriff’s Department’s Custody/Corrections Operations every two weeks.

The Applicants contend that during their entire final compensation period, they were required to work an additional half-hour of overtime every two weeks, i.e., coded 6FE, in

the correctional facilities to which they were assigned. They maintain that out of 636 employees represented by AOCDS in the Department’s Custody/Corrections Operations, 574 (90.25%) are assigned a schedule requiring them to regularly work a half-hour of “overtime” every two weeks.

The Applicants further contend that the 6FE overtime is compensation earnable under Government Code Section 31461, as well as Resolution 98-001 (“Resolution”), adopted by the OCERS Board of Retirement.

OCERS staff concluded that corrections deputies are “just one of a wide range of roles to which a Deputy Sheriff II can be assigned. As such, the 6FE overtime is not “ordinarily worked by persons in the same grade or class...Rather, it is limited only to those in the Deputy Sheriff grade assigned to Orange County corrections facilities that utilize the 12-hour work schedule requiring the .5 hours of overtime in each pay period.”

The hearing in this matter was held over three days. The Applicants were represented by Jacob A. Kalinski, Attorney At Law, Rains Lucia Stern St. Phalle & Silver, PC. Dawn M. Matsuo, Attorney At Law, represented the Orange County Employees’ Retirement System (Respondent).

By stipulation of the Parties and upon submission of closing briefs, the matter was deemed submitted to Hearing Officer Duane E. Bennett for decision on October 19, 2021.

**SUMMARY OF EXHIBITS**

*ADMINISTRATIVE RECORD SUMMARY*

|   |                   |           |   |
|---|-------------------|-----------|---|
| 1 | 0001<br>-<br>0002 | 2/1/2018  | Application for Service Retirement          |
| 2 | 0003<br>-<br>0007 | 2/28/2018 | Benefit Estimate                            |
| 3 | 0008<br>-<br>0012 | 2/28/2018 | Benefit Estimate                            |
| 4 | 0013              | 2/28/2018 | Final Average Salary Calculation Sheet      |
| 5 | 0014              | 2/22/2018 | Employee Pay Rate History 10-6-89 – 2-22-18 |

|    |                   |           |  |
|----|-------------------|-----------|--|
| 6  | 0015<br>-<br>0017 | 2/22/2018 | Leave Management Report 2016 - 2018  |
| 7  | 0018<br>-<br>0051 | 2/28/2018 | Sheriff Timecard Detail 2015 - 2018  |
| 8  | 0052              | 3/11/2018 | <p>OC Sheriff Department Internal Memo Re: Overtime Paid to Deputies</p> <p>Memorandum from Sgt. S. Steinle indicating that each pay period, "a deputy, assigned to work the 3/12 work schedule, works three (3) 11.5 hour shifts one week and three (3) 11.5 hour shifts and one (1) 11 hour shift the next week for a total of 80 hours. The day of the 11 hour shift, deputies are required to work .5 hours, paid as OT, to assure appropriate staffing levels.</p> <p>"This overtime is coded on timesheets and payroll detail as 6FE and was ordinarily worked by all in the same grade/class/rate of pay and is part of the deputy's normal tour of duty.</p> <p>"Since the year 2015, Deputy R. Morikawa has been assigned the 3/12 work schedule for three (3) years till present."</p> |
| 9  | 0053              | 3/12/2018 | <p>OC Sheriff Department Internal Memo Re: Overtime Paid to Deputies</p> <p>Memorandum from Sgt. A. Olukoju indicating that each pay period, "a deputy, assigned to work the 3/12 work schedule, works three (3) 11.5 hour shifts one week and three (3) 11.5 hour shifts and one (1) 11 hour shift the next week for a total of 80 hours. The day of the 11 hour shift, deputies are required to work .5 hours, paid as OT, to assure appropriate staffing levels.</p> <p>"This overtime is coded on timesheets and payroll detail as 6FE and was ordinarily worked by all in the same grade/class/rate of pay and is part of the deputy's normal tour of duty.</p> <p>"Since the year 2015, Deputy R. Morikawa has been assigned the 3/12 work schedule for three (3) years till present."</p> |
| 10 | 0054<br>-<br>0057 | 4/2/2018  | Benefit Estimate   |
| 11 | 0058<br>-<br>0062 | 4/17/2018 | Benefit Estimate   |
| 12 | 0063              | 4/30/2018 | First Benefit Letter   |

|     |              |           |   |
|-----|--------------|-----------|---|
| 13- | 0064<br>0634 | Not dated | <p>Payroll Information:</p> <ul style="list-style-type: none"> <li>- Memorandum from Sgt. A. Olukoju dated 1/22/2018, in reference to overtime paid to deputies who work Correctional Medical Services. It also applies to deputies working at any hospital on scheduled overtime.</li> </ul> <p>“A deputy working CMS (The Jail Ward) at Anaheim Global Medical Center as a regularly assigned shift or on overtime, is paid .5 hours of overtime pay every shift worked. This pay is not random, but built into each shift. Any sworn employee working these positions is paid .5 hours of overtime.</p> <p>“The overtime is coded on timesheets and payroll detail as 2BE and was ordinarily worked by all in the same grade/class/rate of pay working this specific assignment.</p> <p>“Since the year 2014, Deputy R. Morikawa #1751 has been assigned the CMS position/shift at Anaheim Global Medical Center for two and half (2.5 years) till present.”</p> |
| 14- | 0635<br>0636 | 2/8/2018  | Application for Service Retirement  |
| 15- | 0637<br>0640 | 2/13/2018 | Benefit Estimate  |
| 16- | 0641<br>0644 | 2/22/2018 | Benefit Estimate  |
| 17  | 0645         | 2/22/2018 | Employee Pay Rate History 7/12/85 – 2/22/18   |
| 18- | 0646<br>0648 | 2/22/2018 | Leave Management Report 2016 - 2018   |
| 19- | 0649<br>0682 | 3/2/2018  | Sheriff Timecard Detail 2015 - 2018   |
| 20- | 0683<br>0686 | 3/5/2018  | Benefit Estimate  |
| 21- | 0687<br>0690 | 4/2/2018  | Benefit Estimate  |
| 22- | 0691<br>0695 | 4/11/2018 | Benefit Estimate  |

|    |                   |           |   |
|----|-------------------|-----------|---|
| 23 | 0696              | 4/11/2018 | Employee Pay Rate History 7/12/85 – 12/31/99  |
| 24 | 0697              | 4/11/2018 |   |
| 25 | 0698              | 3/23/2018 | Paystub Pay Period 6  |
| 26 | 0699<br>-<br>0740 | 4/9/2018  | Sheriff Timecard Detail 2015 - 2017   |
| 27 | 0741              | 5/1/2018  | First Benefit Letter  |
| 28 | 0742<br>-<br>0743 | 7/17/2018 | <p>Letter from Robert Szewczyk Re: Appeal of monthly benefit:</p> <p>The letter seeks a review of items included in compensation earnable. The letter seeks inclusion of .5 hrs. of overtime (Code 2BE). The letter also seeks inclusion of .5 hrs. of overtime (Code 6FE) that applies to “all Deputies in Corrections assigned the 12-hour work schedule.”</p> <p>The letter indicates that both items fall under the OCERS definition of compensation: “Overtime required to be worked that is ordinarily worked by others in the same grade/class/rate of pay and is also considered part of your normal tour of duty.”</p>   |
| 29 | 0744 –<br>1339    |           | Not Dated Payroll Information   |
| 30 | 1340<br>-<br>1344 | 2/6/1998  | <p>Resolution No. 98-001</p> <p>The Resolution discusses elements to be included and excluded in compensation earnable pursuant to a court decision.</p> <p>Elements to be included in “Compensation Earnable” include, “Remuneration earned and received in cash (under applicable MOU) to the retiring employee during the final compensation period for working the ordinary time required of other employees in the same grade/class...including but not limited to the following item of compensation, and others <u>substantially similar</u> to them...Overtime required to be worked that is ordinarily worked by others in the same grade/class/rate of pay...”</p> <p>Elements to be excluded from “Compensation Earnable” includes “True overtime (amounts paid for working in excess of the time required and ordinarily worked by others in the same grade/class.)...”</p> |
| 31 | 1345<br>-<br>1450 | Not Dated | Memorandum of Understanding: Peace Officer Unit and Supervising Peace Officer Unit 2012 - 2016  |
| 32 | 1451<br>-<br>1582 | Not Dated | Memorandum of Understanding: Peace Officer Unit and Supervising Peace Officer Unit 2016 - 2019  |

|     |              |            |  |
|-----|--------------|------------|--|
| 33- | 1583<br>1586 | 3/18/2019  | OCERS Board Policy: Compensation Earnable Policy   |
| 34- | 1587<br>1596 | Not Dated  | OCERS Master Pay Item Spreadsheet  |
| 35  | 1597         | Not Dated  | Job Number Overtime Code Sheet (July 2019)   |
| 36  | 1598         | 1/23/2015  | Personnel Allocation Theo Lacy Facility  |
| 37  | 1599         | 1/22/2016  | Personnel Allocation Theo Lacy Facility  |
| 38  | 1600         | 1/20/2017  | Personnel Allocation Theo Lacy Facility  |
| 39  | 1601         | 1/31/2018  | Personnel Allocation Theo Lacy Facility  |
| 40  | 1602         | 12/21/2017 | Employee Sign-In Sheet Theo Lacy Facility  |
| 41  | 1603         | 3/12/2018  | Watch List for Theo Lacy   |
| 42- | 1604<br>1617 | 7/18/2019  | <p>Applicant(s) Request for Administrative Hearing (Including letter from OCERS Re: Appeal Determination)</p> <p>The Applicant's legal correspondence references the 6/11/2019 appeal determination by OCERS staff, indicating that the overtime coded as 6FE is "not compensation earnable and was properly excluded" because it is "not overtime required to be worked that is ordinarily worked by others in your same grade/class/rate of pay." The letter notes that the Applicant was a Deputy II at the time of retirement. "The vast majority of Deputy Sheriff II's work in assignments other than corrections and therefore are not required to work this additional .5 hours of 6FE overtime."</p> <p>The OCERS determination is predicated on the case of <i>Stevenson v. OCERS</i> (2010) 186 Cal.App.4<sup>th</sup> 498, where the Court discussed an OC Sheriff and his claim that he should be classified as a "narcotics investigator". In that case, the Court looked to the County's job description and class characteristics of Investigator to conclude that narcotics investigators did not constitute their own grade or class within the meaning of CERL.</p> <p>OCERS staff concluded that corrections deputies are "just one of a wide range of roles to which a Deputy Sheriff II can be assigned. As such, the 6FE overtime is not 'ordinarily worked by persons in the same grade or class'...Rather, it is limited only to those in the Deputy Sheriff II grade assigned to Orange County corrections facilities that utilize the 12-hour work schedule requiring the .5 hours of overtime in each pay period."</p> |



APPLICANT'S DOCUMENTS ADMITTED INTO THE RECORD

No. 43 [1618-2691] - Custody and Courts Operations Manual

No. 44 [ 2692] - Sheriff-Coroner Organizational Chart

No. 48 [2722] Deputy Sheriff I Job Description

RESPONDENT'S DOCUMENTS ADMITTED INTO THE RECORD

No. 45 [ 2712 ] - Email from Diane Ramos dated 6/13/2019:

The email includes the number of sworn personnel employed at OCSD. The number of employees is 2002, including 830 Deputy Sheriff Is and 630 Deputy Sheriff IIs.

OTHER DOCUMENTS ADMITTED INTO THE RECORD

No. 46 [2713] Deputy Sheriff II Job Description

No. 47 [2716] Title Schematic by Title Code

**SUMMARY OF FACTS AND TESTIMONY**

Jeffery Weaver testified that he has been with the Sheriff's Department since October 1994. He currently serves as a Deputy II, and is a member of the AOCDS Board.<sup>1</sup>

He testified regarding the specific nature of the Custody and Courts Operations Manual, and the merger of the Marshall's Office and Sheriff's Department in approximately 2000. The manual applies to custody and court operations only.<sup>2</sup>

Mr. Weaver testified that he has participated in labor negotiations and is familiar with the process. He stated that custody operations are 100% distinct from other operations. The

---

<sup>1</sup> R.T. at pgs. 24, 30-31.

<sup>2</sup> R.T. at pgs. 26-29. A.R. at 43.

working environments are much different than patrol operations. Some deputies work in the jails their entire careers, he said.<sup>3</sup>

In approximately 2008, the Department created positions called Custody Service Assistants. Deputy Sheriff IIs were then reassigned outside of the jails. However, some Deputy IIs remained in the jails under a “grandfathering” arrangement. Now, when a Deputy Sheriff II retires, s/he is replaced by a Deputy Sheriff I.<sup>4</sup>

He described the scheduling in jail operations and the “platoon” schedule. He testified that the schedule was implemented at Theo Lacy Jail in 2009, as the starter facility. He described a schedule where all deputies in jail operations work a schedule that was “imposed” by management. There are four platoons for days and nights. Deputies work during their schedules for 12.5 hours, with one hour unpaid. Every two weeks, they are required to work an additional hour of overtime for overlapping coverage.<sup>5</sup>

“ So it's just a -- it's a back-and-forth. Then you switch to the day side, and they do the back-and-forth thing. And then you switch back.

“The schedule in a day is 12-and-a-half hours a day, 12-and-a-half hours a day -- years, what we used to do prior on all the other schedules is where you'd take a 24-hour clock and split it in half. You have two 12-hour shifts.

“And then in order for us to have position changes, the ability for one person physically to leave a spot and another person to relieve that person, so to get into the seat and out of the seat, they put 30 minutes of overlap on each shift. So each shift is 12-and-one-half hours.

“On the platoon day, out of that 12-and-one-half hours, 11-and-one-half hours are paid time, 1 hour is unpaid time for a lunch period.

That lunch period is taken somewhere between the start and end of the shift. But you are compensated for 11-and-a-half hours each day worked. The hour unpaid facilitates spreading the time to cover the overlap for an operational need for shift relief.”<sup>6</sup>

He stated that 6FE overtime is planned overtime that is pre-scheduled. “The F is the designator for the platoon day, a half an hour...” He testified that it was his belief that the 6FE overtime is equivalent to assignment pay or shift differential pay. The 6FE pay does not change, and a deputy cannot sign up for more 6FE compensation. He deemed the pay as a regular part of a deputy’s recurring work schedule, that is an integral and

---

<sup>3</sup> R.T. at pgs. 31-34.

<sup>4</sup> R.T. at pgs. 40-42.

<sup>5</sup> R.T. at pgs. 48-53.

<sup>6</sup> R.T. at pg. 53:2-23.

indispensable part of the shift. He believed that 6FE should be included as compensation earnable.<sup>7</sup>

*Q Do you believe that the 6FE should be compensation earnable, included within compensation earnable?*

*A Yes.*

*Q Why?*

*A If we look at- - if we look at the last document we were looking at, the Ventura decision, that document that document, it lists the things that are part of comp earnable.*

*And one of the first things on the list of comp earnable is wages and salaries. Those things are your base wages and salaries.*

*And the deputy sheriffs are not salaried employees. We are an employee that has a rate of pay based on the step that you are on.*

*And that rate of pay is multiplied against the hours that you work. And those hours that we work determine salary. It's a simple thing...*

*It's an integral and indispensable part of the shift. And it -- it was designed by the employer and imposed upon us to work.*

*So it wasn't something we created. They created it. They created the half-hour, and it's part of my salary...<sup>8</sup>*

On cross-examination, he testified that a Deputy Sheriff I cannot promote to Deputy II and remain at the jail. They would have to go to patrol. However, a Deputy II can have many different assignments. Deputy Is are assigned to the jail or court operations.<sup>9</sup>

He described motorcycle pay as assignment pay. He stated that deputies working the platoon schedule get shift differential pay. Deputies outside the jail do not receive shift differential pay, since it is only as assignment pay given to deputies who work in corrections or the jails.<sup>10</sup>

He was uncertain as to whether there was a reference in the MOU to a "classification called custody deputies." He testified that a Deputy Sheriff I cannot promote to a custody deputy.<sup>11</sup>

---

<sup>7</sup> R.T. at pgs. 56, 61-65, 68.

<sup>8</sup> R.T. at pgs. 68-70.

<sup>9</sup> R.T. at pgs. 78-80; 113.

<sup>10</sup> R.T. at pg. 105.

<sup>11</sup> R.T. at pgs. 112-113:1-3.

Jon Briggs serves as Assistant Sheriff. He supervises the Professional Services Division, Training Division and Records Technology Division. He was also commander of Custody Operations and served as a captain at Theo Lacy.<sup>12</sup>

He testified that Deputy Sheriff Is are assigned to jail operations. Once a deputy promotes to Deputy II, they are assigned to patrol operations. The change in jail assignments occurred in approximately 2009-2010, when Correctional Services Assistants replaced Deputy Sheriff IIs in the jails. At that time, Deputy Sheriff IIs were moved into Deputy Sheriff I positions, while doing the same work as Deputy Sheriff Is and retaining rank and pay.<sup>13</sup>

*Q Okay. All right. Now, at the time, in and around 2009 and 2010, there were Deputy Sheriff IIs working in the jails; correct?*

*A That's correct.*

*Q And so what became of them?*

*A They started -- they were moved out of what they had traditionally been doing, which is in the guard stations in the senior positions, and were moved into Deputy Sheriff I positions while retaining Deputy II rank and pay.*

*Q So, basically, they were now doing the same work as the Deputy Sheriff Is were?*

*A That's correct.*

*Q But they were -- like their pay was grandfathered in?*

*A That's right.<sup>14</sup>*

The Assistant Sheriff testified that a Deputy Sheriff I cannot promote and remain in the jails. Also, a deputy working in patrol cannot return to the jails as a Deputy Sheriff II.<sup>15</sup>

He believed that there are approximately 630 employees in jail operations, and approximately 180 Deputy Sheriff Is in court operations. Deputy Sheriff Is are assigned to jail operations or in the courts. The custody and courts operations manual has existed for as long as he has been with the Department.

---

<sup>12</sup> R.T. at pgs. 136-138.

<sup>13</sup> R.T. at pgs. 143-145.

<sup>14</sup> R.T. at pgs. 144-145:1-13.

<sup>15</sup> R.T. at pgs. 41, 169-170.

Assistant Sheriff Briggs described the schedule that deputies assigned to jails work as mandatory overtime, coded as 6FE. It is regularly scheduled overtime. He stated that the 10% of personnel that do not get the 6FE pay are in administrative positions outside of the jails. Deputies assigned to the jails must work 7 shifts at 11.5 hours.<sup>16</sup>

No deputy outside of the jails receives the 6FE pay. Assistant Sheriff Briggs testified that, in his opinion, the pay should be included in compensation earnable since it is mandatory and deputies cannot get more of the pay. In this regard, he believed that the 6FE pay is similar to assignment pay, and does not represent true overtime.<sup>17</sup>

*Q Now, on Page 1342, as you alluded to, the document lists elements to be excluded from compensation earnable. Do you see that?*

*A I do.*

*Q And the first one is true overtime. Do you see that?*

*A Yes.*

*Q From your perspective is the 6FE true overtime or is it the overtime that is in the elements to be included on 1341?*

*A Due to the fact that you can't get more of it, can't get less of it, and you don't have a choice whether you work it, it seems more appropriate to be in elements to be included, number one, rather than number two.<sup>18</sup>*

Diane Ramos has worked in the Department's Payroll Unit since 1994. She explained the coding of overtime and described 6FE overtime as planned overtime for deputies. The amount paid is based on the base salary of a deputy.<sup>19</sup>

Ms. Ramos explained overtime coded 6FE:

"So it would be that that shift is an overtime shift, and it's planned overtime, meaning that you know about it in advance. That's the 6. The F component is labeled 'other.' And that's because that type of overtime doesn't fall into any other category. So it's lumped into the 'other.' And the final character, E, is the classification code of the employee working that overtime. So it would be a deputy sheriff."<sup>20</sup>

She testified that in 2019, approximately 30 Deputy Sheriff IIs worked at Theo Lacy. There were 630 Deputy Sheriff IIs in the Department at the time.

---

<sup>16</sup> R.T. at pgs. 154-157.

<sup>17</sup> R.T. at pgs. 160-161.

<sup>18</sup> R.T. at pgs. 160-161:1-2.

<sup>19</sup> R.T. at pgs. 188-190.

<sup>20</sup> R.T. at pg. 190:10-21.

Ms. Ramos stated that the half-hour of overtime in question is “kind of planned - - it is planned because it’s part of that schedule for the foreseeable future for, like I said, that shift rotation; that there is one day they call a platoon that is an 11-hour day, that in order to have coverage for the next shift to come on and do their briefing, that there’s a half-hour of overtime.”<sup>21</sup>

Ms. Ramos stated that the 6FE overtime must be worked under the platoon schedule, that has been in effect 10-15 years. However, the 80.5 hours worked is not considered as regular hours, since any time over 80 hours cannot be coded as regular pay in the County’s software system. Ms. Ramos testified that the payroll system would “error out” if hours in excess of 80 per pay period were uploaded.<sup>22</sup>

She discussed an email that she drafted (Bates at 2712), and stated that in 2019, there were 830 Deputy Sheriff Is and 630 Deputy Sheriff IIs. Deputy Sheriff Is are primarily assigned to the jails or courts, with the bulk of deputies assigned to the jails. Deputy IIs primarily work in patrol functions.<sup>23</sup>

As of 2019, there were 30 Deputy Sheriff IIs at Theo Lacy, which is the Department’s largest jail facility. Ms. Ramos assumed that the number would continue to decline and that there would eventually be no Deputy Sheriff IIs in the jails.<sup>24</sup>

She testified as to the philosophy of the Department regarding Deputy Sheriff IIs in patrol:

“The philosophy or the intent of the department is to have Deputy Sheriff IIs out on patrol, not really in the correctional facilities.

“So if a Deputy Sheriff I was trying to go to patrol, they go through these different phases of training. They go out on patrol.

“If they don't make it, for whatever reason, and they are sent back, at that point it was agreed that they would go back to a Deputy Sheriff I. They failed probation basically.”<sup>25</sup>

She testified that Deputy Sheriff Is assigned to jails work the platoon schedule, and approximately 70-80% work mandatory overtime. In former days, Deputy Sheriff IIs

---

<sup>21</sup> R.T. at pg. 217.

<sup>22</sup> R.T. at pgs. 218-220.

<sup>23</sup> R.T. at pgs. 223-230.

<sup>24</sup> R.T. at pgs. 232-234.

<sup>25</sup> R.t. at pg. 232:16-25.

could work their whole careers in the jails. When the Department's philosophy changed, some Deputy IIs remained in the jails.<sup>26</sup>

Ms. Ramos has not heard of a "custody deputy," and indicated that the pay scale is based on the title of Deputy Sheriff I or II.<sup>27</sup>

Applicant Robert Szewczyk testified that he retired from the Sheriff's Department in March 2018. He worked for the Department from July 1985 until the date of his retirement. He promoted to Deputy Sheriff II in 1987.<sup>28</sup>

He remained at the jails during his career. As a Deputy II, he worked at the IRC and was responsible for intake, guard stations, housing modules, etc. At the time of his retirement, he was assigned to Theo Lacy.<sup>29</sup>

His assignment at Theo Lacy remained the same until "CSA's moved in." He then became a "proowler" deputy. He testified that Deputy Sheriff IIs in the jails perform the same, or similar, duties as Deputy Is working in the jails. He stated, "But, basically, what happened is that CSAs took over the jobs of most Deputy IIs. And the Deputy IIs now were doing the same job as Deputy -- the same job as a Deputy Sheriff I."<sup>30</sup>

He worked the platoon schedule and was required to work overtime. He stated that 6FE was a part of his normal shift. Deputies worked every other Wednesday, with the last .5 hour being coded as 6FE.<sup>31</sup>

He testified that he had a discussion with OCERS staff about 6FE overtime as compensable earning, and believes that 6FE is compensation earnable since it was required overtime as reflected in the Board Resolution. He stated that the pay was not random, but was the regular schedule for deputies assigned to the jails or corrections.<sup>32</sup>

On cross-examination, Mr. Szewczyk stated his understanding that he could remain at the jails, even after the transition to Deputy Is and Community Services Assistants. He testified that he could have applied to go to patrol as a Deputy II, but he chose to continue working at the jails. If he wanted to go to patrol, he would have had to gain patrol experience and the transition was not automatic.<sup>33</sup>

---

<sup>26</sup> R.T. at pgs. 233-234.

<sup>27</sup> R.T. at pg. 255:6-16.

<sup>28</sup> R.T. at pgs. 258-259; 265:22-24.

<sup>29</sup> R.T. at pgs. 262-267:1-11.

<sup>30</sup> R.T. at pgs. 268-270.

<sup>31</sup> R.T. at pgs. 270-272:1-8.

<sup>32</sup> R.T. at pgs. 272-273; 276.

<sup>33</sup> R.T. at pgs. 278-279; 288-289; 294-297

Mr. Szewczyk testified that his duties were interchangeable with those of a Deputy Sheriff I when he worked in the jails. In regards to the duties of a Deputy Sheriff I and II in custody operations, the Applicant testified:

*THE WITNESS: When I first started they were different. Like I said, a Deputy Sheriff II was more experienced and had a lot more responsibilities. And -- Well, so you had a lot more experience, and you were kind of like a supervisor of the Deputy Sheriff Is.*

*If something went wrong, not only did that Deputy I get in trouble, you got in trouble if – if they were on your floor.*

*But now, the fact is there is no – nothing distinguishable between -- any Deputy Sheriff I or II can work anywhere in the jail -- anywhere in the jails.*

He testified that working in the jails requires special knowledge of California Code Title 15, minimum standards for jails. He also had to receive special training in the Prison Rape Elimination Act (“PREA”).<sup>34</sup>

Applicant Rodney Morikawa testified that he retired from the Department in March 2018. He began his employment with the Department in October 1989. He went to the Central jail and promoted to Deputy Sheriff II in July 1994. He retired from Theo Lacy after being there 10-12 years.<sup>35</sup>

He testified that Deputy Sheriff Is and IIs were interchangeable in the jails. He did not apply for a position in patrol for personal reasons.<sup>36</sup>

Like Mr. Szewczyk, he felt that 6FE pay should be included in his retirement benefit calculation as compensable earnings.<sup>37</sup>

Suzanne Janike was called to testify by both Parties. She has been employed by OCERS since 12/7/1999. She serves as the Assistant CEO of External Operations, and oversees the Benefits Division. As a part of her responsibilities, she reviews benefit determinations.<sup>38</sup>

---

<sup>34</sup> R.T. at pgs. 301-303:1-15.

<sup>35</sup> R.T. at pgs. 306-307, 309.

<sup>36</sup> R.T. at pg. 310:6-18; 316:11-19.

<sup>37</sup> R.T. at pgs. 311-312:1-2.

<sup>38</sup> R.T. at pg. 327.



Ms. Janike discussed compensation earnable. She testified that assignment pay is compensation received based on what an employer defines as a special assignment. Such pay depends on how it is defined in the MOU.<sup>39</sup>

In discussing the Resolution, Ms. Janike stated that the list under compensation earnable is not an exclusive list. She did not necessarily know why some items are listed as compensation earnable. She stated that OCERS staff routinely reviews the MOU to properly ascertain items subject to compensation earnable, such as motorcycle pay.<sup>40</sup>

*Q Okay. And so when you're looking at an item like motorcycle bonus, what would you be looking for to determine whether it should be included in compensation earnable?*

*A I would be looking to see if it was paid for the regular work duties. So it would be for performance during normal work hours or a special skill.*

*Q So are those all requirements?*

*A Yes.*

*Q So it has to be performance during normal work hours and for a special skill?*

*A That's correct.*

*Q And the performance during normal work hours, where does that requirement come from?*

*A Normal work hours is defined in the Alameda Decision. The Supreme Court Alameda Decision is recent. So I'm not sure exactly how to answer that question.<sup>41</sup>*

She testified that in determining compensation earnable, OCERS staff considers normal work duties, and performance during normal work hours for a special skill. She also referenced Government Code section 31461. She stated that her definition of pay for a special skill is not noted in the Resolution or Government Code section 31461.<sup>42</sup>

*Q Okay. What about that it's for a special skill? Where does that come from?*

*A That's probably just my recollection of the type of pay that we look at.*

*Q But I mean, is that -- is that requirement documented anywhere?*

*A I don't see it in the resolution.*

---

<sup>39</sup> R.T. at pgs. 327-329.

<sup>40</sup> R.T. at pgs. 329-334.

<sup>41</sup> R.T. at pg. 333:9-25.

<sup>42</sup> R.T. at pgs. 333-335.

*Q So not seeing it in the resolution, does that change your testimony that that's not actually a part of the requirement for something to be included in compensation earnable?*

*A Yes.*<sup>43</sup>

Ms. Jenike testified that overtime is not typically included in compensation earnable. For overtime to be compensation earnable, "It would have to be regularly scheduled, required and ordinarily worked by all in the same class."<sup>44</sup> In this regard, such compensable overtime is worked more like regular wages, as opposed to incidental overtime.

*Q Okay. And what is the purpose of the distinction between true overtime and the overtime that is included?*

*A The overtime that's required to be worked that is ordinarily worked by others in the same grade or class is included because it would be more like regular wages and not incidental.*

*Q Okay. I mean, to put it, I guess, in maybe more like colloquial phrases, we don't want people to spike their pensions. Isn't that the reason for the distinction?*

*A That's part of it.*

While testifying that she was not aware of "custody deputies being a class," Ms. Jenike testified regarding her interpretation of compensation earnable under the Resolution and various types of pensionable pay. She testified that in order to be compensation earnable, pay such as night differential pay must be available to all employees in the class. Subsequently, she qualified this testimony by indicating that the pay must ordinarily be worked by a majority of members in the class.<sup>45</sup>

*Q Okay. Now, I noticed though in your response, you said it was worked by all others in the same grade/class/rate of pay. Didn't you say that?*

*A I did.*

*Q Okay. And why are you -- why do you say that even though that doesn't exist in the definition in the resolution?*

*A That's our interpretation of the resolution.*

*Q Now, do you know whether there is any statute that uses -- or that requires something to be worked by all others in the same grade/class/rate of pay, et cetera?*

---

<sup>43</sup> R.t. at pg. 335:2-13.

<sup>44</sup> R.T. at pg. 340.

<sup>45</sup> R.T. at pgs. 342-343.

*A I don't believe it's in the statute...<sup>46</sup>*

*Q So is there a certain threshold of individuals that would have needed to receive the compensation for it to be included as compensation earnable?*

*A The majority of the class.*

*Q So 50.1 percent -- well, 50 percent plus 1. Is that fair to say?*

*A It's hard to put a number to it. But, okay.*

*Q Well, I'm --*

*A It's the majority.*

*Q You're just saying a simple majority; correct?*

*A Okay. Yes.*

*Q Well, I mean, I'm just asking OCERS what OCERS believed is the necessary threshold for the item to be included in compensation earnable.*

*So "majority" is your word, not mine. I'm just trying to determine what OCERS standard was.*

*A Then I would say all of the class.*

*Q Okay. So all of the class?*

*HEARING OFFICER BENNETT: ...Can I get clarification because I want to make sure I understand what the witness' testimony is.*

*And the first response appeared to be that OCERS made a determination. I'm not trying to state --I'm just trying to state my understanding. So you all can correct me, both Mr. Kalinski and Ms. Matsuo, also.*

*What I hear the witness saying at first is that OCERS made a determination that the majority of the class would have had to work the required overtime for it to be compensation earnable.*

*Now, my understanding is that it would be all of the members in the class would have to work the overtime for it to be compensation earnable? Please correct me, anybody.*

*MR. KALINSKI: Your understanding of the witness' testimony is the same as my understanding of the witness' testimony.*

*HEARING OFFICER BENNETT: Ms. Jenike, you can clarify if that's incorrect.*

---

<sup>46</sup> R.T. at 342-343:1-7.

*THE WITNESS: I think it's important to use the words ordinarily worked by all.*

*HEARING OFFICER BENNETT: Ordinarily worked. Okay. So ordinarily worked by all members?*

*THE WITNESS: Correct.*

*BY MR. KALINSKI:*

*Q So that is the standard that OCERS applied in this case?*

*A Correct.*

*Q Okay. And so in your earlier testimony about a majority, you misspoke. Is that fair to say?*

*A Perhaps, yes.*

*Q Okay. So what you're saying is that the test is that it is ordinarily worked by all the members in the class?*

*A Correct.<sup>47</sup>*

Ms. Jenike testified that one of the reasons for such treatment regarding overtime is to avoid pension spiking. Required overtime does not allow employees to work more overtime and employees cannot manipulate the schedule to get more overtime. "Scheduled" overtime means that it is not incidental, she said.<sup>48</sup>

Ms. Janike explained that 6FE is overtime by deputies assigned to work in the jails. Those assigned to the jails receive .5 hours of "regularly scheduled" or "planned" overtime. She stated that there is other planned overtime in the Department worked by deputies in various assignments.<sup>49</sup>

In this matter, OCERS staff made its determination by reviewing the MOU to ascertain whether others in the class were required to work the same overtime schedule. It was determined that the majority of the Deputy Sheriff II class would have to work the overtime in order for it to be included in compensation earnable.<sup>50</sup>

---

<sup>47</sup> R.T. at pgs. 360-361.

<sup>48</sup> R.T. at pgs. 347-348.

<sup>49</sup> R.T. at pgs. 352-356:1-2.

<sup>50</sup> R.T. at pgs. 359-364.

Ms. Janike testified that staff ultimately determined that the overtime worked by the Applicants was not ordinarily worked by all members in the class. In order to be included in compensation earnable, the overtime must ordinarily be worked by all.<sup>51</sup>

Ms. Janike provided various responses regarding POST pay and other assignment pay in juxtaposition to compensation earnable, and the criteria applied to mandatory overtime. She explained that in this instance, staff determined that less than 50% of Deputy Sheriff IIs received pay for 6FE.<sup>52</sup>

Ms. Janike also testified that the issue of whether 6FE is to be included in compensation earnable for Deputy Sheriff Is has not yet been determined. She surmised that if 65-75% of deputies received 6FE, it would be included in compensation earnable. However, such would not be the case if the percentage was 50-55%.

*Q And a hypothetical question:  
Supposing that 75 percent of Deputy Sheriff Is receive the extra half-hour of overtime compensation, would it be your understanding that it should then be included within compensation earnable?*

*THE WITNESS: Yes.*

*BY MR. KALINSKI:*

*Q Okay. Same question. Change the threshold to 65 percent. Would your -- would it then be your understanding?*

*A Yes.*

*Q Change it to 50 percent.*

*A No.*

*Q How about 51 percent?*

*A I don't know.*

*Q And to just to complete, how about 55 percent?*

*A I don't know.*

*Q Okay. So is it fair to say that there's not a specific number, but that it's more of a qualitative analysis?*

---

<sup>51</sup> As indicated above, Ms. Janike's testimony varied between requiring that all members work the schedule, to requiring a majority of members to work the schedule. R.T. at pgs. 363-364.

<sup>52</sup> R.T. at pgs. 366-369.

*A That would be fair.*<sup>53</sup>

Ms. Jenike testified that OCERS relies on the employer's determination regarding "grade/class/rate" of pay to their employees. The determination is based on the documentation that the employer uses to identify their employees.<sup>54</sup>

As a part of the determination in this matter, staff reviewed job duties of different individuals within the Deputy Sheriff II classification, and the published classifications on the County websites.<sup>55</sup>

Ms. Jenike was not certain of jail assignment pay. However, she testified that the .5 hours of overtime earned in this matter is not the same as assignment pay, or shift differential pay. She stated that overtime that is a part of a regular shift may not necessarily constitute overtime.

Ms. Janike indicated that she did not know if the Department's change in jail philosophy was a relevant factor, or something that OCERS realized in its determination. She testified, "I don't know that the philosophy change would have been considered, It would have been the numbers that would have mattered."<sup>56</sup>

Ms. Jenike testified that the .5 hr. of work at issue is overtime because it is paid at time and a half and reported to OCERS as overtime. She was uncertain as to whether the time would constitute overtime if reported to OCERS as an assignment pay.<sup>57</sup>

She explained that the County's system will not record 80.5 hours as regular pay, and that 80 hours is the threshold for regular hours worked. She also stated that the employer could dictate the threshold for regular hours worked. It was her understanding the Department could indicate that regular hours worked constituted 80.5 hours. Under such circumstances, 80.5 hours would be pensionable.<sup>58</sup>

On further examination, Ms. Janike stated that only 30 out of 630 Deputy Sheriff IIs worked at Theo Lacy, or in custody positions. Therefore, there is not a sufficient number of deputies in corrections to justify the 6FE as compensation earnable. It was her

---

<sup>53</sup> R.T. at pgs. 379-380:1-2.

<sup>54</sup> R.T. at pg. 389:1-20.

<sup>55</sup> R.T. at pgs. 390:5-18.

<sup>56</sup> R.T. at pg. 393:7-19.

<sup>57</sup> R.T. at pgs. 402-403:1-9.

<sup>58</sup> R.T. at pgs. 405-406.

understanding that the Department was trying to reduce the number of Deputy Sheriff IIs in the jails.<sup>59</sup>

Ms. Janike discussed the website links to the title and position of Deputy Sheriff II. She stated that the class specification for the position is on the website, and that OCERS uses documents on the website, including pay schedules, to determine class of employees. In addition, staff examines pay scale, grade code, title code and the "Title Schematic," which dictates the rates of pay. Staff also looks to the MOU, and how classes are discussed or covered.<sup>60</sup>

Ms. Janike expressed some uncertainty about Deputy Sheriffs assigned to Theo Lacy, who work the same schedule. She was uncertain as to whether the subject overtime would have been included in compensation earnable if all the deputies working in custody facilities had the same schedule.

*Q Okay. And are you aware that deputies who --Deputy Sheriff Is and IIs who are assigned to those facilities predominately work the same schedule as Mr. Szewczyk and Mr. Morikawa worked?*

*A I don't know the schedules.*

*Q Is it your understanding that different jails have different schedules?*

*A Yes.*

*Q Okay. So is it your understanding that the only folks -- that the only Deputy Sheriff Is and IIs who worked the schedule that Mr. Szewczyk and Mr. Morikawa worked were the deputies assigned to Theo Lacy?*

*A I don't know.*

*Q Was it a relevant factor when you were determining whether or not the pay should be included what the schedule was like at Theo Lacy?*

*A Yes.*

*Q And how about in comparison to other custody facilities?*

*A Yes.*

*Q So would it be fair to say that if all the deputies working in the custody facilities would have had the same schedule, then you would have determined that the overtime would have been included in compensation earnable?...*

---

<sup>59</sup> R.T. at pgs. 409-411:1-3.

<sup>60</sup> R.T. at pgs. 417-423.

*THE WITNESS: I don't know.*<sup>61</sup>

### **ISSUE**

Whether compensation coded 6FE, for the additional half-hour of overtime received by the Applicants, should be regarded as “compensation earnable” and included in final compensation when calculating the Applicants’ retirement allowances?

### **DISCUSSION AND ANALYSIS**

The Applicants have the burden of proof by a preponderance of the evidence to support their contentions that their retirement benefits should include the 6FE calculations of overtime in their final compensation or compensation earnable.

As provided by Evidence Code section 500, “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” The burden of proof is only met with reliable, “substantial” evidence. (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) Substantial evidence clearly implies that such evidence must be of ponderable legal significance. Such evidence cannot be deemed synonymous with any evidence. “It must be reasonable..., credible, and of solid value...” (*Kuhn v. Dept. of General Service* (1994) 22 Cal.App.4<sup>th</sup> 1627, 1633.)

Once the initial burden is met, the responding party is charged with producing evidence as to the matters established. The burden of producing evidence means the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue. (See Evidence Code section 110.)

The Hearing Officer notes that the determination in this matter is predicated on an analysis of the evidence, with particular scrutiny given to Government Code section 31461, Board Resolution 98-001 and *Stevenson v. OCERS* (2010) 186 Cal. App. 4<sup>th</sup> 498.

---

<sup>61</sup> R.T. at pgs. 437-438.



In reaching a determination and recommendation, the Hearing Officer also carefully analyzed the whole of the administrative record, including treatment of classes and grades under the applicable MOUs.

A) Board Resolution 98-001 and Stevenson v. OCERS

Prescient to these appeals is Board Resolution 98-001 (“Resolution”) adopted by the OCERS Board of Retirement.

The Resolution is in furtherance of interpreting Government Code section 31461, that provides, in part:

(a) “Compensation earnable” by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed “compensation earnable” when earned, rather than when paid.

(b) “Compensation earnable” does not include, in any case, the following:

\*\*\*

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

OCERS staff contends that the half-hour of overtime (coded as 6FE) is not time ordinarily worked by employees in the same grade or class of positions as the Applicants, who were both Deputy Sheriff IIs. Therefore, the overtime should not be included in compensation earnable.

At first blush, the Respondent’s determination appears to reasonable based on the number of Deputy Sheriff IIs assigned to corrections, and required to work 6FE overtime. Moreover, both Parties contend that their interpretations support Board Resolution 98-001, that states, in part:

1. Elements to be Included in “Compensation Earnable”.

Remuneration earned and receivable in cash (under the applicable MOU) to the retiring employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be included in “compensation earnable,” including but not limited to the following items of compensation, and others substantially similar to them:

Base salary and Wages  
Bilingual Premium Pay  
Educational Incentive (“POST”) Pay  
Aircraft Rescue Firefighting  
Paramedic Pay  
Motorcycle Bonus  
Emergency Dispatch Pay  
Field Training Officer Bonus  
Shift differential pay  
Confined Space Pay  
Longevity Incentive  
Automobile Allowance (paid in cash or to extent automobile provided for personal use and declared as income)  
Uniform Allowance  
Uniform Maintenance Allowance  
Payoffs of Vacation and Sick Leave and Holiday to the extent earned (pro-rated on a monthly basis), not taken as time off, and permitted to be cashed out (pro-rated on a monthly basis) under the applicable MOU (regardless of when actually cashed out)  
Employee Contributions to Deferred Compensation Plan  
**“Overtime” required to be worked that is ordinarily worked by others in the same grade/class/rate of pay**  
Compensatory Time (if not excluded as “true overtime” (see definition in section 2) and to the extent in excess of minimum required reserve)  
“Madera” pay  
Additional compensation for Scheduled Meal Periods  
Flexible Benefits (“Cafeteria Plan”) to the Extent paid in Cash (applicable to members retiring before January 1, 1991 (Emphasis added.)

2. Elements to be Excluded From “Compensation Earnable”.

Remuneration other value to the employee neither earned or payable in cash to the employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be excluded from “compensation earnable”, including but not limited to the following items, and others substantially similar to them:

**True Overtime (amounts paid for working in excess of the time required and ordinarily worked by others in the same grade/class.)**  
Employer Contribution to Deferred Compensation Plan  
Employer Contributions to Retirement System  
Employer “Pick-Up” of Employee Contributions to Retirement System  
Payoffs of Vacation and Sick Leave and Holiday Pay, to the extent neither earned nor permitted to be cashed-out under the applicable MOU, regardless of when actually cashed-out

Flexible Benefits (“Cafeteria Plan”) provided in-kind  
Flexible Benefits (“Cafeteria Plan”) paid in cash to the extent paid to members retiring on and after January 1, 1991  
Terminal (“Final”) Pay, to the extent not included per Sec .1, above  
Expense Reimbursements  
In-kind Advantages (e.g., food, lodging, board, laundry, fuel)  
Fees, Licenses, Memberships provided to member by the employer (Emphasis added.)

In denying the Applicants’ benefits appeals, OCERS staff relied on the Court’s holding in *Stevenson v. OCERS* (2010) 186 Cal. App. 4<sup>th</sup> 498. In *Stevenson*, the Court discussed a deputy sheriff and his claim that he should be classified as a “narcotics investigator”. The Court reviewed the County’s job description and class characteristics of Investigator to conclude that narcotics investigators did not constitute a separate grade or class within the meaning of CERL.

Relying on *Stevenson*, OCERS staff concluded that corrections deputies are “just one of a wide range of roles to which a Deputy Sheriff II can be assigned. As such, the 6FE overtime is not “ordinarily worked by persons in the same grade or class’...Rather, it is limited only to those in the Deputy Sheriff II grade assigned to Orange County corrections facilities that utilize the 12-hour work schedule requiring the .5 hours of overtime in each pay period.” Presumably, OCERS staff followed the same analysis in reaching its determination that the Applicants’ benefits appeals should be denied.

At the outset, it is axiomatic that there is insufficient evidence that the formal title of “custody deputy” exists within the County or Department. Similar to the Court’s holding in *Stevenson*, there is a lack of evidence that there is a classification of custody deputy. The Court in *Stevenson* analyzed several lines of evidence in concluding that the title of “narcotics investigator” did not constitute a classification for purposes of compensation earnable. The Court referenced the Board Resolution in its decision.

The Court also relied on its decision in *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483 (*Ventura* ).

In *Ventura*, the California Supreme Court analyzed the scope of the terms “compensation” and “compensation earnable” under CERL. The Court held: “After considering the language and legislative history of the pertinent CERL provisions, we conclude that the Legislature did not intend to require that a county include its contributions to an employee's deferred compensation plan in ‘compensation’ as defined in CERL. We also conclude, however, that the other disputed premiums are ‘compensation.’ With the exception of overtime pay, items of ‘compensation’ paid in cash, even if not earned by all employees in the same grade or class, must be included in

the ‘compensation earnable’ and ‘final compensation’ on which an employee's pension is based.” (*Ventura*, supra, 16 Cal.4th at p. 487.)

The Supreme Court stated: “The payments required by CERL to be included in the calculation of the pension of an employee whose county employer has elected to establish a retirement system governed by CERL presents a question of statutory construction, and thus legislative intent. [¶] Which payments to a county employee other than base pay must be included when determining an employee's final compensation is a question crucial to the proper administration of a CERL pension system, including the ability of the county to anticipate and meet its funding obligation. Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute.” (*Ventura*, supra, 16 Cal.4th at page 490.)

The *Stevenson* Court relied on the *Ventura* Court’s holding in deciding the OCERS classification issue. First, the Court looked to the MOUs that were in effect during the relevant periods. The Court determined that the MOUs that were in effect each identified five “classes” of positions within the peace officer unit: (1) deputy sheriff I; (2) deputy sheriff II; (3) deputy sheriff trainee; (4) investigator; and (5) investigator-polygraph operator. Neither identified “narcotics investigator” as a grade or class of positions within the peace officer unit. A similar situation exists in this matter, where a “custody deputy” is not identified in the MOUs.

Secondly, the Court analyzed the Orange County Website identifying the classification of Investigator to determine that no such classification existed for narcotics investigator. Likewise, in this instance, the website and exhibits do not identify a custody deputy. The same is true pursuant to the Title Schematic under Bates 2716, that lists titles of Deputy Sheriff I or Deputy Sheriff II.

However, and perhaps, most importantly for this case is the Court’s reference to the administrative record and documentary evidence. As the Applicants argue, the Court’s holding emphasized that the proper grade or class of employees is a factual matter. The Court held that the documentary evidence was sufficient to establish that the petitioner’s grade or class of position was “Investigator” within the meaning of Government Code section 31461. In so finding, the Court said, “But the Legislature did not define or otherwise intend the phrase ‘grade or class of positions’ to consist of the smallest unit of workers who have the most in common as to duties, responsibilities, and schedules. Imposing such a specialized and perhaps also transient analysis, *without regard to the county's determination of classes of positions* might undermine ‘the ability of the county to anticipate and meet its funding obligation’ which would be in contravention of legislative intent.” (citing *Ventura*, supra, 16 Cal.4th at p. 490. Emphasis added.)

The OCERS staff denial of the benefits appeals in this matter refers to the Court's ruling. However, the Hearing Officer finds that the Court's holding does necessarily support the denial of benefits in this instance. This is particularly true in light of the preponderance of the evidence.

As noted above, and as the Respondent argues, there is insufficient evidence that the formal classification of custody deputy exists in the MOU, or on the County Website. However, there is a preponderance of evidence that the Applicants' grade or classification of Deputy Sheriff II working in custody and jail operations was synonymous with the duties of Deputy Sheriff I.

In other words, those Deputy Sheriff IIs assigned to custody and jail operations functioned the same as Deputy Sheriff Is assigned to custody and jail operations, according to testimony and the weight of evidence. The grades and classifications were, for all intents and purposes, interchangeable and the same. In fact, the OCERS staff denial letter appears to implicitly acknowledge such a finding by making reference to the "Deputy Sheriff II grade assigned to Orange County corrections facilities." The testimony substantiates that such Deputy Sheriff IIs function in the same roles as Deputy Sheriff Is assigned to Orange County corrections facilities.

Although the Hearing Officer declines to adopt the Applicants' argument regarding the classification of "Custody Deputies" per se, the Applicants correctly argue that any distinction between Deputy Sheriff Is and Deputy Sheriff IIs in corrections have been erased. Deputy IIs in the jails began performing exactly as Deputy Sheriff Is when the Department's jail philosophy changed.<sup>62</sup>

Because of the unique situation regarding the Department's change in jail philosophy, that occurred in approximately 2008-2012 according to the evidence, Deputy Sheriff IIs perform the same functions as Deputy Sheriff Is while working in jail operations. The preponderance of evidence indicates that Deputy Sheriff IIs assigned to the jails during the transition had the option of applying for work in patrol, or remaining in the jails. The Applicants chose to remain in the jails (or at Theo Lacy) until their retirements. This was allowed and permitted by the County and Department under a grandfathering arrangement. Therefore, the Applicants became subject to the same 6FE mandatory overtime requirements as the majority of the Deputy Sheriff I grade, that is routinely assigned to custody or jail operations.

Importantly, the position of Deputy Sheriff II assigned to corrections is not the same as a Deputy Sheriff II in patrol. In fact, a Deputy Sheriff II seeking to leave corrections is not

---

<sup>62</sup> Applicant's reply brief at pgs. 12-13.

automatically guaranteed a spot in patrol. They must pass training and achieve other core proficiencies before entering patrol. According to Asst. Sheriff Briggs, any Deputy Sheriff II that fails to pass such standards must return to corrections as a Deputy Sheriff I.<sup>63</sup>

Suzanne Janike testified that she has been employed by OCERS since 12/7/1999. She serves as Assistant CEO of External Operations, and oversees the Benefits Division. As a part of her responsibilities, she reviews benefit determinations.

Ms. Janike testified that staff did not necessarily consider the change in the Sheriff Department's jail philosophy, or work schedules, for deputies when conducting its analysis. In essence, the manner and scheduling of deputies working in custody operations was not a consideration in the staff analysis. However, the Hearing Officer finds that this analysis is critical in rendering a determination in this matter.

Moreover, Ms. Janike testified that she was uncertain as to whether overtime for deputies assigned to custody operations working the same schedule would be considered compensation earnable. Therefore, there were other unresolved questions of compensation earnable in this regard.

*B) The Hearing Testimony and the Preponderance of Evidence Indicates that the Applicants were in a Unique Position as Deputy Sheriff IIs Assigned to Jail Operations and Required to Work Mandatory Overtime*

The Applicants both testified that as deputies assigned to custody operations, they were required to work mandatory overtime of .5 hours every two weeks under the "platoon schedule." According to testimony, this schedule consists of seven 11.5-hour work shifts every two weeks, and was imposed by the Department. The schedule is ordinarily required to be worked by all deputies assigned to custody or jail functions. The evidence indicates that the vast majority of deputies assigned to the jails, whether Deputy Sheriff I or Deputy Sheriff II must work the required .5 hours of overtime each two weeks, coded

---

<sup>63</sup> R.T. at pgs. 143-145; 169-170.

as 6FE. The characterization of the overtime indicated that it was budgeted, planned, mandatory, routinely scheduled and a part of the Applicants' regular pay.<sup>64</sup>

AOCDS Board Member Jeffery Weaver testified regarding the specific nature of the Custody and Courts Operations Manual.<sup>65</sup> He indicated that the manual specifically applies to custody and court operations only. He testified that some deputies work in the jails their entire careers.

He testified that in approximately 2008, the Department created positions called Custody/Correctional Service Assistants. Deputy Sheriff IIs were then reassigned outside of the jails. However, some Deputy Sheriff IIs remained in the jails under a grandfathering arrangement. Now, when a Deputy Sheriff II retires while working in custody operations, s/he is replaced by a Deputy Sheriff I.

Mr. Weaver described the scheduling in jail operations as the platoon schedule. He described a schedule where all deputies in jail operations work a schedule that was mandated and "imposed" by management. There are four platoons that work days and nights. Deputies work schedules for 12.5 hours, with one hour unpaid. Every two weeks, they are required to work an additional half-hour of overtime for overlapping coverage.

He testified that 6FE overtime is planned overtime that is pre-scheduled. He further stated that it is his belief that 6FE overtime is equivalent to assignment pay or shift differential pay. The 6FE pay does not change, and a deputy cannot sign up for more 6FE overtime pay. He said that the pay is a regular part of a deputy's recurring work schedule, that is an integral and indispensable part of the shift.

On cross-examination, Mr. Weaver testified that any Deputy Sheriff I that now promotes cannot remain at the jail, and must go to patrol.

Mr. Weaver described motorcycle pay as assignment pay. He stated that deputies working the platoon schedule can also receive shift differential pay. However, only deputies working in the jails, whether Deputy Sheriff I or II, may receive shift differential pay. In this regard, a Deputy Sheriff I and II are treated the same in regards to the mandatory overtime and shift differential pay while working in jail operations.

Assistant Sheriff Briggs testified that Deputy Sheriff Is are assigned to jail operations. Once a deputy promotes to Deputy Sheriff II, he or she is assigned to patrol operations. The change in jail assignments occurred in approximately 2009-2010, when Correctional

---

<sup>64</sup> Bates at 1597.

<sup>65</sup> A.R. at 43.

Services Assistants replaced Deputy Sheriff IIs in the jails. At that time, various Deputy Sheriff IIs remaining in the jails were moved into Deputy Sheriff I positions, but their pay was grandfathered in.

He believed that there are approximately 630 employees in jail operations, and approximately 180 Deputy Sheriff Is in court operations. Deputy Sheriff Is are assigned to jail operations or the courts. He referenced the Custody and Courts Operations Manual, and indicated that it has existed for as long as he has been with the Department.

Assistant Sheriff Briggs described the schedule that deputies assigned to custody/jails work as mandatory overtime, coded as 6FE. It is regularly scheduled overtime. He stated that the 10% of personnel that do not get the 6FE pay are in administrative positions outside of the jails. Deputies assigned to the jails must work 7 shifts at 11.5 hours, whether a Deputy Sheriff I or Deputy Sheriff II.

No deputy outside of the jails receives the 6FE pay. Assistant Sheriff Briggs testified that, in his opinion, the 6FE pay should be included in compensation earnable since it is scheduled, mandatory and since deputies cannot obtain more of the pay. In this regard, he believed that 6FE pay is similar to assignment pay.

Diane Ramos explained the coding of overtime, and also described 6FE overtime as planned overtime for deputies. The amount paid is predicated on the base salary of a deputy.

She testified that in 2019, approximately 30 Deputy Sheriff IIs worked at Theo Lacy. There were 630 Deputy Sheriff IIs in the Department at the time.

Ms. Ramos stated that the 6FE overtime must be worked under the platoon schedule, that has been in effect 10-15 years. The 80.5 hours worked is not considered as regular hours, since any time over 80 hours cannot be coded as regular pay in the County's software system and would "error out".

She testified that Deputy Sheriff Is in the jails work the platoon schedule, and approximately 70-80% work the mandatory overtime. In former days, Deputy Sheriff IIs could work their whole careers in the jails. When the Department's philosophy changed, some Deputy IIs remained in the jails. Newly promoted Deputy Sheriff IIs must now leave the jails and are assigned to patrol on a probationary basis. Similar to Asst. Sheriff Briggs, she stated that if a Deputy Sheriff II is unsuccessful on probation for whatever reason, s/he must return to the jails as a Deputy Sheriff I.<sup>66</sup>

---

<sup>66</sup> R.T. at pg. 232:16-25.



Ms. Janike testified regarding compensation earnable. She stated that assignment pay is compensation received based on what an employer defines as a special assignment. Such pay depends on how it is defined in the MOU. Importantly, she stated that consideration and deference is given to the employer, or Department in this instance, in defining employee grade, rank and/or classification.

Ms. Jenike's testimony was somewhat ambiguous regarding various types of pay included in compensation earnable. Her testimony reflected difficulty, and some uncertainty, regarding the determination in these matters. She offered varied testimony in stating that in order to be compensation earnable, overtime pay must be available to *all* employees in the class. Subsequently, she qualified this testimony by indicating that the pay must ordinarily be worked by a *majority* of members in the class. Her testimony appeared to reflect the legitimate difficulty that staff might have had in analyzing this issue.

Ms. Jenike stated that overtime is not typically included in compensation earnable. In order to be compensable, it must be regularly scheduled and required to be worked by all, or a majority, in the same grade or class. In this regard, such compensable overtime is worked more like regular wages, as opposed to incidental overtime.

However, the Supreme Court in *Ventura* did not list a requirement that such compensation must be earned by all in a grade or class. As referenced above, the Court stated that with the exception of additional overtime pay (true overtime), "items of 'compensation' paid in cash, *even if not earned by all employees in the same grade or class*, must be included in the 'compensation earnable' and 'final compensation' on which an employee's pension is based." (*Ventura*, supra, 16 Cal.4th at p. 487. Emphasis added.)

Ms. Janike testified that one reason for the exclusion of incidental overtime is to avoid pension spiking. On the other hand, required or mandatory overtime does not allow employees to work more overtime, and employees cannot manipulate the schedule to get more overtime. "Scheduled" overtime means that it is not incidental, she stated.

Ms. Janike described 6FE to be overtime by deputies assigned to the jails. Deputies assigned to the jails receive .5 hours of regularly scheduled or planned overtime. She explained that the County's system would not record 80.5 hours as regular pay, and that 80 hours is the threshold for regular hours worked.

However, she also testified that the employer, or Department, could dictate the threshold for regular hours worked. She stated that the Department could specify that regular hours

worked constituted 80.5 hours. Under such circumstances, 80.5 hours would be pensionable as regular hours worked.

Based on Ms. Janike's testimony, and the weight of the evidence, it is clear that the overtime claimed in this instance (as 6FE) is not incidental overtime, nor is it "true overtime" as defined by the Board Resolution. There is a preponderance of evidence that the 6FE overtime is planned, scheduled, mandatory and required for deputies ordinarily assigned to jail operations. Moreover, the overtime worked by the Applicants in this case fits within the definition of overtime required to be worked under the Board Resolution, and included as compensation earnable, even if not worked by all Deputy Sheriff IIs throughout the Department.

In this sense, the distinct classifications of Deputy Sheriff I or II assigned to corrections is a difference with little distinction, particularly for that grade or class of Deputy Sheriff IIs grandfathered into jail operations. Consistent with the preponderance of evidence, the Department has determined that Deputy Sheriff Is and Deputy Sheriff IIs performing custody or jail operations are interchangeable, and one and the same grade for all intents and purposes.

Assistant Sheriff Briggs testified that when the Department transitioned to non-sworn personnel in the jails, Deputy Sheriff IIs remaining in the jails were moved into Deputy Sheriff I positions, but their pay was grandfathered in. In addition, there is substantial evidence that the duties of Deputy Sheriff I and II in custody operations are "interchangeable."

Applicant Robert Szewczyk testified that he remained at the jails throughout his career. As a Deputy Sheriff II, he was responsible for guard stations, inmate fights, housing modules, etc. He retired from the Department, while working at Theo Lacy as a Deputy Sheriff II. He testified that Deputy Sheriff IIs in the jails performed the same or similar duties and functions as a Deputy Sheriff I working in the jails.

He worked the platoon schedule, and was required to work overtime. He stated that 6FE was a part of his normal shift. Deputies worked every other Wednesday, with the last .5 hour being coded as 6FE. He stated that the pay was not random, but was the regular, planned schedule for deputies assigned to the jails or custody operations.

Applicant Szewczyk also distinguished the position of a deputy sheriff assigned to jail operations, as opposed to patrol, by specifying the special knowledge required for jail assignments. He testified that working in the jails requires special knowledge of

California Code Title 15, minimum standards for jails. He also had to receive training in the Prison Rape Elimination Act (“PREA”).

Nevertheless, as a Deputy Sheriff II, his duties were interchangeable with those of a Deputy I. Also, transportation deputies in custody operations could be either a Deputy I or Deputy II.

Applicant Rodney Morikawa testified similarly. Similar to Mr. Szewczyk, Mr. Morikawa testified that Deputy Sheriff Is and IIs were interchangeable in the jails. He did not apply for a position in patrol for personal reasons.

The Hearing Officer concludes that the subject overtime pay (coded as 6FE) was required to be worked by the Applicants as Deputy Sheriff IIs, as it was for Deputy Sheriff Is assigned to custody and jail operations. The preponderance of evidence also indicates that the schedules and duties of Deputy Sheriffs I and II in custody operations were redefined as an interchangeable grade by the Sheriff’s Department.<sup>67</sup>

There is also a preponderance of evidence that the Applicants’ positions as Deputy Sheriff IIs, assigned to custody and jail operations, constituted a grandfathered grade of Deputy Sheriff I/Deputy Sheriff II, scheduled to work 6FE overtime as normal hours within the same grade or class. This is particularly true since the mandatory overtime requirements, duties and functions were the same for both Deputy Sheriff Is and Deputy Sheriff IIs in jail or custody operations.

*C) The Required Overtime in this Matter was not “True Overtime” as Referenced in Resolution 98-001*

Board Resolution 98-001 defines two types of overtime. In addition to the mandatory overtime discussed above, the Resolution references “true overtime”. The Resolution excludes true overtime from compensation earnable.

The preamble to the Resolution states the Board’s intent in adopting the Resolution, and provides the rationale for its substance. In this regard, the exclusion of incidental or true overtime in the definition of compensation earnable seems clear. The Board wanted

---

<sup>67</sup> As discussed above, Ms. Janike testified that determinations in these matters must give deference to the employer’s determinations of grade/class/rank.

incidental overtime that could cause pension spikes to be excluded from compensation earnable. In fact, the second to last portion of the preamble makes clear this intention by stating:

“WHEREAS, The Board of Retirement finds that the proper exercise of its statutory duties under the Government Code requires it to prevent the improper manipulation of compensation for purposes of determining compensation earnable, and to avoid the artificial inflation of pension benefits.”

Likewise, Ms. Janike testified that the exclusion of incidental overtime is to avoid artificial pension inflation. However, the Hearing Officer finds that the instant situation involved planned, budgeted and required overtime as opposed to true overtime that could be used to artificially inflate pensions. It is apparent that the 6FE overtime at issue could not be increased, altered, nor manipulated.

Notwithstanding the determination that the 6FE overtime at issue was not pensionable, it cannot be argued that the overtime constituted “true overtime,” as reflected in the Board Resolution. Since the overtime was scheduled, budgeted, planned, and ordinarily required to be worked by deputies assigned to jail operations, it was clearly not voluntary, incidental, nor subject to pension spiking or artificial inflation.

Jeffery Weaver testified that “planned overtime” is expected or prescheduled overtime.<sup>68</sup> Similarly, Asst. Sheriff Briggs testified that 6FE is planned overtime, and that a deputy cannot earn more of the overtime.<sup>69</sup>

Ms. Ramos agreed that the overtime required to be worked by the Applicants under the platoon schedule is planned. She testified that the half-hour of overtime in question is “kind of planned - - it is planned because it’s part of that schedule for the foreseeable future for, like I said, that shift rotation; that there is one day they call a platoon that is an 11-hour day, that in order to have coverage for the next shift to come on and do their briefing, that there’s a half-hour of overtime.”<sup>70</sup> In this sense, an employee could not earn more of the overtime by volunteering for the same, etc.<sup>71</sup>

The discussion of overtime in the MOU underscores this analysis. For example, Article I, section 3 states, “If in the judgment of the Department, work beyond the normal workday, workweek or work period is required, the Department will notify any employee

---

<sup>68</sup> R.T. at pg. 58.

<sup>69</sup> R.T. at pg. 155.

<sup>70</sup> R.T. at pg. 217.

<sup>71</sup> R.T. at pg. 217.

who may be asked to perform such work of the apparent need for such work as soon as practicable prior to when the work is expected to begin...”

Under MOU Article I, section 3C(5), the MOU makes it clear that such overtime is true overtime in stating, “Time worked as overtime shall not be used to earn fringe benefits or to serve out probation or merit increase periods...”<sup>72</sup>

The Respondent makes an interesting argument in its closing brief at pg. 4, by arguing, “The only item listed that might impact the issue here is [Gov. Code, §31461] subdivision (b)(3) which states that ‘payments of additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise’ **are not included** in compensation earnable. (Gov. Code, §31461, subd. (b)(3).) Overtime is ‘outside normal working hours’ and is therefore, not to be included in compensation earnable. This would mean that the 30 minutes of overtime attached to each shift for the Applicants working the extra half-hour every other Wednesday would not be included in compensation earnable.”

The Hearing Officer reads Government Code § 31461(b)(3) to exclude from compensation earnable “additional services” outside of normal work hours. Section 31461(b)(3) excludes from compensation earnable, “Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.” In this instance, the overtime in question had nothing to do with additional services. Moreover, the overtime was not rendered “outside of normal working hours.”

The Supreme Court in *Ventura* discussed overtime in the context of the number of days ordinarily worked. The Court referenced a standard work week (or month) and made reference to overtime as extra hours. The Court held that with the exception of overtime pay, items of compensation paid in cash, even if not earned by all employees in the same grade or class, must be included in the “compensation earnable” and “final compensation” on which an employee's pension is based. (*Ventura*, supra, 16 Cal.4th at pgs. 487, 500.)

In *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.* (2020) 9 Cal.5th 1032, 1097, the Court specifically discussed the purpose of Government Code § 31461(b)(3) and its application to traditional overtime in stating:

“A comparable rationale supports the enactment of section 31461, subdivision (b)(3), which excludes “[p]ayments for *additional services* rendered outside of normal working hours.” Section 31461 bases compensation earnable on the same number of days worked

---

<sup>72</sup> Bates at 1465.

for all employees within a particular pay grade. The long-standing exclusion of overtime from compensation earnable, now embodied in section 31461.6, confirms that an employee's pensionable compensation is generally to be based on pay for work performed during normal working hours. Consistently with this exclusion of overtime, subdivision (b)(3) requires the exclusion of compensation for other services rendered outside normal working hours. *This restriction prevents employees from volunteering, during their final compensation period, to perform additional services outside normal working hours in order to artificially inflate their daily rate of pay...* (Emphasis added.)

Although 6FE is coded as planned overtime, it appears to be a misnomer in this instance. The evidence indicates that the "overtime" was actually a part of the Applicants' normal work schedule as required by the Department. It was not overtime worked by the Applicants in addition to their normal schedule. Nor was it time rendered outside of normal working hours pursuant to Government Code § 31461(b)(3), or volunteered time in order to artificially manipulate or inflate the Applicants' rates of pay.

The evidence indicates that the 6FE at issue was more akin to regular pay and part of the Applicants' normal work schedule. Both Ms. Janike and Ms. Ramos testified that the Sheriff's Department, or employer, could redefine regular work hours as 80.5 hours. However, they noted that the County's software system would not allow such a schedule, presumably due to inherent software limitations. Ms. Ramos testified that the subject 80.5 hours is not considered as regular hours, since any time over 80 hours cannot be coded as regular pay in the County's software system.<sup>73</sup>

The Hearing Officer finds that there is substantial evidence that the 6FE overtime at issue is not true overtime, and constitutes regular pay or overtime consistent with the definition of compensation earnable pursuant to Board Resolution 98-001.

*D) Distinction Between the Grade or Class of Deputies Assigned to Custody and Jail Operations*

The *Stevenson* Court analyzed the administrative record to decide the job classification in dispute. In the instant matter, the preponderance of evidence and the administrative record appear to make little distinction between Deputy Sheriff I or Deputy Sheriff II assigned to custody or jail operations.

---

<sup>73</sup> As discussed above, Diane Ramos testified that the payroll system would "error out" if regular hours above 80 were uploaded. R.T. at pg. 220:7-11.

Both parties presented various analyses of what the *Stevenson* Court held in regards to the “grade and class” of employees. The Applicants argue that the Court emphasized that the term “grade or class,” as set forth in Government Code section 31461, is not necessarily synonymous with a job classification described in an applicable MOU or County enactment.<sup>74</sup> The Respondent argues that the Court relied on three lines of evidence, including the MOUs and administrative record, to determine the proper grade or class of position.<sup>75</sup> In many respects, the gravamen of this matter concerns the proper scope of the Applicants’ “grade” or “class” as Deputy Sheriffs.

The MOUs reflect pay that is afforded to deputies who work night shifts in the jails, whether Deputy Sheriff Is or Deputy Sheriff IIs. The evidence indicates that only deputies assigned to the jails are eligible for such pay. As deputies working in the jails, the Applicants were eligible for this shift differential pay, as opposed to other Deputy Sheriff IIs in patrol. Such differentiation supports the analysis that the Applicants were in a unique Deputy Sheriff grade or class that was recognized by the Department.

Likewise, the evidence reflects that custody transportation pay is equally available to a Deputy Sheriff I or II in jails or custody operations. Under the MOU, there appears to be little distinction between deputies assigned to jails or custody operations and various types of pay. This indicates that the Department considers a Deputy Sheriff II in jail/custody operations to be in the same, or similar, grade as a Deputy Sheriff I. It is axiomatic that the vast majority of such deputies are required to work the same mandatory overtime coded as 6FE.

This finding is further supported by two memorandums written on behalf of Applicant Morikawa in Exhibits 8 and 9. In Exhibits 8 and 9, Departmental members Sgt. S. Steinle and Sgt. A. Olukaju stated that in each pay period, “a deputy, assigned to work the 3/12 work schedule, works three (3) 11.5 hour shifts one week and three (3) 11.5 hour shifts and one (1) 11 hour shift the next week for a total of 80 hours. The day of the 11 hour shift, deputies are required to work .5 hours, paid as OT, to assure appropriate staffing levels.

*“This overtime is coded on timesheets and payroll detail as 6FE and was ordinarily worked by all in the same grade/class/rate of pay and is part of the deputy’s normal tour of duty.” (Emphasis added.)*

As discussed above, Assistant Sheriff Briggs and Jeffery Weaver testified regarding the same beliefs and sentiments, stating that the overtime worked by the Applicants was the

---

<sup>74</sup> Applicants’ Closing Brief at pg. 19.

<sup>75</sup> Respondent’s Closing Brief at pg. 6.

same overtime ordinarily required to be worked by deputies assigned to jails and custody operations. By implication, it follows that the Department and MOU reflect that the Applicants were in the same (or similar) grade or class as Deputy Sheriff Is assigned to custody and jail operations.<sup>76</sup>

To underscore the unsettled distinction between Deputy Sheriff I and II assigned to custody or corrections, it is interesting to note the testimonies of Assist. Sheriff Briggs and Diane Ramos regarding Deputy Sheriff IIs who fail probation in patrol. Both witnesses testified that if a Deputy Sheriff II is unsuccessful on probation when assigned to patrol, s/he must return to the jails as a Deputy Sheriff I.<sup>77</sup>

The Respondent argues that the Applicants had the choice to leave the jails and work in patrol. As such, they would not have been assigned to work the platoon schedule or 6FE overtime. Although this appears to be a good argument, it must be recognized that there was no certainty or guarantee that the Applicants could have successfully transferred to patrol. The evidence indicates that the Applicants would have had to pass various metrics and standards in order to receive an assignment in patrol. If they failed probation, they would have to return to the jail assignment as a Deputy Sheriff I. In this sense, the Applicants did not have a vested right to a patrol assignment.

The preponderance of evidence regarding the Sheriff's Departmental philosophy, scheduling, patterns and practices reveals that the grade of Deputy Sheriff I and Deputy Sheriff II assigned to custody operations is a distinction without a difference. In essence, the Department/employer established a class or grade of Deputy Sheriffs assigned to custody and jail operations that is interchangeable in scheduling, functions and duties. This is true regardless of whether the employee serves as a Deputy Sheriff I or Deputy Sheriff II assigned to custody operations.

California law establishes that a member's employer determines the member's "grade or class of positions" within parameters established by statute. CERL does not define "grade or class of positions." The testimony from Asst. Sheriff Briggs and Jeffery Weaver underscores this point, and evidences the fact that the Department has determined that the grade of Deputy Sheriff I and Deputy Sheriff II in custody operations is one and the same.

Although not necessarily applicable in this matter, Assembly Bill 498, amended on September 10, 2021, proposes to remove the word "grade" and replace it with "group" in Government Code section 31461. The bill defines "group or class of positions" as

---

<sup>76</sup> The Applicants also rely on the manual for custody and jail operations to support the exclusive roles of Deputy Sheriff Is and IIs assigned to jail operations.

<sup>77</sup> R.T. at pgs. 143-145; 232:16-25;



meaning “a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work-related grouping, and would specify that a single employee is not a group or class.” The bill also states that it is a clarification of existing law. While it does not apply to this appeal, the intent of the Legislature relative to the issue presented above should be noted.

The Respondent juxtaposed the Applicants’ 6FE overtime to that of other Deputy Sheriff IIs working in patrol in concluding that it did not constitute compensation earnable. To the contrary, the evidence demonstrates that the 6FE earned by the Applicants could have been compared to the vast majority of Deputy Sheriff Is (and Deputy Sheriff IIs) working the same custody or jail assignment. The later would be the appropriate comparison given the Department’s change in jail philosophy, grandfathered deputy sheriff assignments, budgeting and mandated 6FE platoon scheduling.

*E) The Board Resolution Does Not Include an Exclusive List of Items to Be Included in Compensation Earnable*

The Resolution does not reflect an exhaustive list of items to be included in compensation earnable. Instead the Resolution states under “Elements to be Included in ‘Compensation Earnable’”:

“Remuneration earned and receivable in cash (under the applicable MOU) to the retiring employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be included in ‘compensation earnable,’ including but not limited to the following items of compensation, and others substantially similar to them.” (Emphasis added.)

At the hearing, the Parties argued as to what was intended by the language, “others substantially similar to them.” It would appear that the instant situation constitutes a situation where the “substantially similar” language of the Resolution would apply. Assistant Sheriff Briggs agreed that the 6FE compensation is substantially like jail assignment pay.<sup>78</sup> Moreover, there was no evidence presented to contradict Asst. Sheriff’s Brigg’s testimony.

---

<sup>78</sup> R.T. at pgs. 161-162.

Based on the preponderance of the evidence and the analysis above, the Hearing Officer also finds that the 6FE compensation appears to fall within the definition of compensation earnable, since it is substantially similar to other items of pay included in compensation earnable.

The testimony by Ms. Jenike did not specifically differentiate between the different types of pay afforded under compensation earnable. Nevertheless, the preponderance of evidence suggests that the 6FE overtime worked by the Applicants was substantially similar, or tantamount, to other assignment pay that is pensionable. There is a preponderance of evidence that 6FE compensation is substantively similar to assignment or Shift Differential Pay to deputies who work in custody or the jail assignments. This is particularly true since the vast majority of deputy sheriffs, whether Deputy Sheriffs I or II, are required to work the 6FE or platoon schedule.

As referenced above, the Hearing Officer is aware that the *Stevenson* Court held, “the Legislature did not define or otherwise intend the phrase ‘grade or class of positions’ to consist of the smallest unit of workers who have the most in common as to duties, responsibilities, and schedules. Imposing such a specialized and perhaps also transient analysis, without regard to the county's determination of classes of positions might undermine ‘the ability of the county to anticipate and meet its funding obligation’ which would be in contravention of legislative intent.”

Such is not the situation in this instance. The Hearing Officer finds that the Applicants were grandfathered into a unique position that not only involved a group of Deputy Sheriff IIs, but the vast majority of Deputy Sheriff Is. All of the deputies, similarly assigned within the jails, are required to work the same routine, mandatory overtime schedule. Since the overtime worked by the Applicants was budgeted, planned, scheduled and mandatory, it could not be argued that it undermined the ability of the County to anticipate and meet its funding obligations as discussed by the Supreme Court in *Ventura* and *Stevenson*.

As discussed above, the *Alameda* Court discussed, *inter alia*, the issue of pension spiking in the context of California Public Employees’ Pension Reform Act (“PEPRA”) amendments. Significantly, the Court concluded that “PEPRA’s amendments of CERL were enacted for the constitutionally permissible purpose of conforming pension benefits more closely to the theory underlying section 31461 by closing loopholes and proscribing potentially abusive practices.”

In further reference to the purposes for PEPRA, the Court explained, “the amendment was designed to limit pension spiking, the manipulation of compensation to artificially

increase a pension benefit. Unquestionably, preventing manipulation of the terms of a pension plan to produce outsize benefits is a substantively proper reason for modifying the plan, since it serves to maintain the system's financial integrity and discourage gamesmanship in the management of compensation practices."

In this context, it is clear that the 6FE overtime at issue was not an "abusive practice" contrived by the Applicants, or an effort at "gamesmanship" to spike their pensions. To the contrary, the overtime was budgeted and mandated by the Sheriff's Department as a part of the Applicants' normal schedule and regular pay.

It could be argued that this is a case of first impression. In this regard, the Respondent's determination to deny benefits is understandable. However, the Hearing Officer respectfully finds that the weight of evidence produced at the hearing, in juxtaposition to established case law, leads to a different result.

Even assuming arguendo that this situation is ambiguous and does not neatly fall into any particular classification scheme or analysis, the Hearing Officer concludes his analysis and recommendation by relying on the prescient language of the Supreme Court in *Ventura*. The Court's language militates in favor of granting the Applicants' appeals.

In *Ventura*, the Supreme Court stated, "Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute." (*Ventura*, supra, 16 Cal.4th at page 490. Emphasis added.) "Pension legislation must be liberally construed and applied to the end that the beneficent results of such legislation may be achieved...." (*Bowen v. Board of Retirement* (1986) 42 Cal.3d 572, 577.) "Under a well-established rule, pension legislation should be liberally construed, resolving all ambiguities in favor of the applicant." (*Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1603.)

**PROPOSED FINDINGS**

The Hearing Officer concludes that there is a preponderance of evidence to find:

1. The Applicants were grandfathered into the Deputy Sheriff grade assigned to Orange County corrections facilities that utilize the work schedule requiring .5 hours of overtime in each pay period, coded as 6FE;
2. The Sheriff's Department permitted the Applicants to remain in their assignments in custody and jail operations when the Department's philosophy changed in approximately 2008-2010 regarding Deputy Sheriff IIs and patrol assignments;
3. The Applicants testified regarding their reasons for remaining in their Deputy Sheriff II custody or jail assignments, as opposed to seeking a transfer to patrol;
4. Pursuant to directives of the Sheriff's Department, the duties and responsibilities of Deputy Sheriff Is and Deputy Sheriffs IIs assigned to jail/custody operations are interchangeable;
5. The Deputy Sheriff grade assigned to Orange County jail or custody operations includes both Deputy Sheriff Is and Deputy Sheriffs IIs;
6. The applicable MOUs recognize a grade of Deputy Sheriffs assigned to jail/custody operations, regardless of whether they serve as Deputy Sheriff I or Deputy Sheriff II;
7. The vast majority of Deputy Sheriff Is and Deputy Sheriffs IIs assigned to jail/custody operations are required to work mandatory overtime coded as 6FE;
8. Overtime coded as 6FE is not incidental and cannot be voluntarily increased;
9. Overtime coded as 6FE does it constitute "true overtime" as defined by Board Resolution 98-001; nor does it represent time worked in excess of the time ordinarily worked by the Applicants in their jail/custody assignments;
10. Overtime coded as 6FE is budgeted, planned, scheduled, mandated and required by the Department for the Deputy Sheriff grade assigned to jail/custody operations;
11. There is substantial evidence that overtime worked by the Applicants constituted "overtime required to be worked that is ordinarily worked by others in the same Deputy Sheriff grade/class/rate of pay";

12. There is a preponderance of evidence that the 6FE overtime required to be worked by the Applicants is substantially similar to other pensionable types of pay, such as shift differential and assignment pay;
13. In *Stevenson*, the Court analyzed several lines of documentary evidence and the administrative record in finding that the disputed employee classification did not exist. Following the Court's precedence, the Hearing Officer considered the administrative record and the preponderance of evidence in finding that the Applicants retired from the Deputy Sheriff grade assigned to jail/custody operations, and were required to work planned, mandatory overtime as a part of their normal working hours that included time coded as 6FE;
14. Government Code § 31461(b)(3) makes it clear that payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise does not constitute compensation earnable;
15. The preponderance of evidence indicates that the 6FE overtime worked by the Applicants was not for additional services, or for time worked outside of normal working hours;
16. The Supreme Court in *Ventura* discussed overtime in the context of the number of days ordinarily worked. The Court referenced a standard work week (or month) and made reference to "overtime" as extra hours. The Court held that with the exception of overtime pay, items of compensation paid in cash, even if not earned by all employees in the same grade or class, must be included in the "compensation earnable" and "final compensation" on which an employee's pension is based. (*Ventura* (1997) 16 Cal.4th 483, 487, 500.)
17. In *Ventura*, the Supreme Court also stated, "Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute." (*Ventura*, supra, 16 Cal.4th at page 490.)

**CONCLUSION**

For the reasons stated herein, the Hearing Officer recommends:

- 1) That the appeals of the Applicants be **Granted**, and that the 6FE overtime compensation at issue be regarded as compensation earnable for purposes of calculating the retirement benefits of Applicants Robert Szewczyk and Rodney Morikawa.
- 2) The Hearing Officer further recommends that the final calculation allowances of Applicants Robert Szewczyk and Rodney Morikawa be adjusted retroactively to the dates of their respective retirements.

The Hearing Officer decides the matter before him based on the preponderance of evidence presented. The Hearing Officer's findings and recommendation apply to these Applicants in their individual capacities as retired Deputy Sheriff IIs, formerly assigned to jail/custody operations, based upon the facts and evidence presented at the hearing. The Hearing Officer does not render these findings and recommendation intending that they should apply to the retirement situations of other deputy sheriffs. The Hearing Officer's jurisdiction is limited to the sole matter before him.

DATED: November 9, 2021

Respectfully Submitted,

*/s/ Duane E. Bennett, Hearing Officer*

1 ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
2 2223 Wellington Avenue  
3 Santa Ana, California 92701  
4 Telephone: 714/558-6220

4 Dawn M. Matsuo  
5 Attorney for Orange County Employees  
6 Retirement System

**FILED**  
Orange County Employees  
Retirement System  
**NOV 29 2021**  
By B. Singleton, Clerk  
of the Hearing Officers

8 **BEFORE THE BOARD OF RETIREMENT OF THE**  
9 **ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

11 In the Matter of ROBERT SZEWCZYK  
12 and RODNEY MORIKAWA

14 PETITIONERS.

) **Case Nos. 0014-106996, 0012-119403**  
)  
) **Hearing Officer: Duane Bennett, Esq.**  
)  
) **RESPONDENT’S OBJECTIONS TO**  
) **HEARING OFFICER’S PROPOSED**  
) **FINDINGS OF FACT CONCLUSIONS**  
) **AND RECOMMENDATION**

Date: April 26, 27 & 29, 2021  
Time: 10:00

18 Respondent, Orange County Employees Retirement System, (“OCERS”) hereby submits its  
19 Objections to the Hearing Officer’s Proposed Findings of Fact Conclusions and Recommendation.

20 OCERS objects to the Hearing Officer’s recommendations that the “6FE overtime compensation at  
21 issue be regarded as compensation earnable for purposes of calculating the retirement benefits of Applicants  
22 Robert Szewczyk and Rodney Morikawa” on the grounds that the 6FE was overtime compensation not  
23 regularly worked by all in the same class/grade/rate of pay as the Applicants. Not all Deputy Sheriff IIs were  
24 required to work the .5 hour of overtime each pay period. OCERS also objects to the Hearing Officer’s  
25 second recommendation that OCERS adjust the final calculation allowances of the Applicants retroactively to  
26 the dates of their respective retirements as being an issue outside the scope of his authority.

28 OCERS further objects to the specific Findings of Fact as stated below.

1 1. OCERS objects to the Hearing Officer's Proposed Findings of Fact listed under number 1 as  
2 follows:

3 A. **"The Applicants were grandfathered into the Deputy Sheriff grade assigned to Orange**  
4 **County corrections facilities."** Object to the incorrect summation of the evidence. As Deputy  
5 Sheriff II's at the time OCSO changed its policy that only Deputy Sheriff I's would work in  
6 the jail facilities, the Applicants were permitted to choose to continue working in the jail  
7 facilities even though they were both DEPUTY SHERIFF II'S. Their classification as Deputy  
8 Sheriff II's never changed. The "grandfathered" term referred to the fact they were not forced  
9 to leave the jail facilities even though they were Deputy Sheriff II's. No new classification was  
10 developed by the County of Orange or the Union representing these two individuals. OCERS  
11 further objects to the term "Deputy Sheriff grade assigned to Orange County corrections  
12 facilities" as vague and ambiguous in that no such grade of employees existed. The employees  
13 were either Deputy Sheriff Is or Deputy Sheriff IIs, not "Deputy Sheriff grade."

14 B. **"the Deputy Sheriff grade assigned to Orange County corrections facilities."** Object to this  
15 phrase as there is no recognized classification as "Deputy Sheriff grade assigned to the Orange  
16 County corrections facilities". Deputy Sheriff I's are assigned to the corrections facilities upon  
17 completion of training. Deputy Sheriff II's [as the Applicants] were permitted to continue to work  
18 in the jail facilities. But they were NEVER reclassified as "Deputy Sheriff grade assigned to"  
19 corrections of jails.

20 C. **"correction facilities that utilize the work schedule requiring .5 hours of overtime in each pay**  
21 **period, coded as 6FE."** OCERS does not object to this fact.

22  
23  
24  
25 2. OCERS objects to the Hearing Officer's Proposed Findings of Fact listed under number 2 as  
26 follows:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A. **“regarding Deputy Sheriff IIs and patrol assignments”** Object as to this entire phrase as vague and ambiguous in its meaning. OCERS agrees that Deputy Sheriff IIs were permitted to continue to work in the jail facilities.

3. OCERS Objects to the Hearing Officer’s Proposed Findings of Fact listed under number 3 as follows:

A. **“The Applicants testified regarding their reasons for remaining in their Deputy Sheriff II custody or jail assignments, as opposed to seeking a transfer to patrol.”** Object as the mere fact that the Applicants’ testified regarding their reasons for remaining in their Deputy Sheriff II custody or jail assignments” is irrelevant.

4. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 4 as follows:

A. **“Pursuant to directives of the Sheriff’s Department, the duties and responsibilities of Deputy Sheriff Is and Deputy Sheriffs IIs assigned to jail/custody operations are interchangeable.”**

OCERS objects to this fact as irrelevant. Grades/classifications are not based upon job duties as each classification can be assigned to various positions within the OCSD and each position would require similar or completely different duties.

5. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 5 as follows:

A. **“The Deputy Sheriff grade assigned to Orange County jail or custody operations”**

OCERS objects as there is no “Deputy Sheriff grade assigned to Orange County jail or custody operations”. There are only Deputy Sheriff Is and Deputy Sheriff IIs grades assigned to the jails. There is no evidence that a Deputy Sheriff grade assigned to jails existed, only the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

grades of Deputy Sheriff Is and Deputy Sheriff IIs. HO recognized that the “grade” of Deputy Sheriff Is and Deputy Sheriff IIs are two distinctive grades, not one.

6. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 6 as follows:

A. **“The applicable MOUs recognize a grade of Deputy Sheriffs assigned to jail/custody operations, regardless of whether they serve as Deputy Sheriff I or Deputy Sheriff II.”** The applicable MOUs do not recognize a separate grade/class of “deputy Sheriffs assigned to jail/custody operations. The MOU identifies grade/class of Deputy Sheriff Is and Deputy Sheriff IIs that are assigned to the jail or custody operations. The term “Deputy Sheriff assigned to jail/custody operations” does not appear in the MOU in reference to a grade or class.

7. OCERS does not object to the Hearing Officer’s Proposed Findings of Fact listed under number 7

8. OCERS objects to the Hearing officer’s Proposed Findings of Fact listed under number 8 as follows:

A. **“Overtime coded as 6FE is not incidental and cannot be voluntarily increased”** OCERS objects to the term incidental as vague and ambiguous.

9. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 9 as follow:

A. **“Overtime coded as 6FE does not constitute “true overtime” as defined by Board Resolution 98-001”** – OCERS objects to this on the grounds that the .5 hour worked once every pay period is overtime that was not worked by everyone in the same grade, class or pay rate. Not all Deputy Sheriff II’s received this .5 hour of overtime pay, a .5 hour paid at time and a half based upon the Applicant’s pay rate at the time he worked it.

1           **B. “nor does it represent time worked in excess of the time ordinarily worked by the Applicants**  
 2           **in their jail/custody assignments”** 6FE was coded as planned overtime by the employer who  
 3           designated it as such. While it was planned overtime, it was overtime just the same. It was not a  
 4           part of the Applicant’s Normal work hours as the regular work hours constituted 80 hours of work  
 5           during the normal two-week pay period. Therefore, the .5 hour worked every two weeks was  
 6           overtime worked by the Applicants in **addition** to their normal schedule. Working .5 hour of  
 7           scheduled overtime each pay period did not change the normal work hours – 80 hours every two  
 8           weeks.  
 9

10          10. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 10 as  
 11          follows:

12  
 13          A. **“Overtime coded as 6FE is budgeted, planned, scheduled, mandated and required by the**  
 14          **Department for the Deputy Sheriff grade assigned to jail/custody operations”** OCERS objects  
 15          to the use of the term “Deputy Sheriff grade assigned to jail/custody operations” as vague and  
 16          ambiguous, as no such grade as “Deputy Sheriff grade assigned to jail/custody operations” exists.  
 17          The record is devoid of any support for a “Deputy Sheriff grade assigned to jail/Custody  
 18          operations” classification as only the grades/classes of Deputy Sheriff Is and Deputy Sheriff II  
 19          were assigned to work in jail facilities. Deputy Sheriff Is and Deputy Sheriff IIs worked overtime  
 20          coded as 6FE.  
 21

22          11. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 11 as  
 23          follows:

24          A. **“There is substantial evidence that overtime worked by the Applicants constituted ‘overtime**  
 25          **required to be worked that is ordinarily worked by others in the same Deputy Sheriff**  
 26          **grade/class/rate of pay.”** OCERS objects to this fact on the grounds that there was no evidence  
 27          that the overtime, i.e., the .5 hours every two weeks, was ordinarily worked by others in the same  
 28          Deputy Sheriff grade/class/rate of pay. **THERE IS NO DEPUTY SHERIFF GRADE ASSIGNED**

1 TO WORK IN THE JAIL/CUSTODY. THERE WERE ONLY DEPUTY SHERIFF Is and  
 2 DEPUTY SHERIFF IIs. The Deputy Sheriff IIs assigned to work the .5 hours while assigned to the  
 3 jail, received this additional overtime, worked this overtime, and were NOT in the same grade as  
 4 the Deputy Sheriff Is. Moreover, the Deputy Sheriff IIs that worked the jail assignment were not  
 5 in the same class or rate of pay. The evidence established that Deputy Sheriff Is and Deputy  
 6 Sheriff IIs had separate pay rates, with Deputy Sheriff Is having a lower start pay and a lower  
 7 maximum pay than the low and top pay for the Deputy Sheriff IIs.  
 8

9 12. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 12 as  
 10 follows:

11 **A. There is a preponderance of evidence that the 6FE overtime required to be worked by the**  
 12 **Applicants is substantially similar to other pensionable types of pay, such as shift differential**  
 13 **and assignment pay.”** OCERS objects to this fact in that the Deputy Sheriff IIs already received  
 14 shift differential pay and had the employer and union wanted to include the 6FE pay in this type of  
 15 shift differential they would have done so in the MOU. They did not. Night Shift Differential is  
 16 provided to three grades/classes – Deputy Sheriff Is, Deputy Sheriff IIs and Sergeant assigned to  
 17 the jails. [AR 1355.] The MOU does not mention a class/grade of “Deputy Sheriffs assigned to’  
 18 the jails or corrections. The pay for night shift differential is \$100 per month, not per hour or half  
 19 an hour worked. Plus, pay for the night shift differential is not typical overtime pay of time and a  
 20 half, as is the pay for the .5 hour worked once per pay period. The .5 hour of overtime pay is not  
 21 substantially similar to night shift differential pay. Moreover, each of the assignment pay  
 22 mentioned in the applicable MOUs have a similar pay to the night shift differential, i.e., the pay is  
 23 not associated with each hour worked as is the .5 hour of 6FE pay. [AR 1357-1361.]  
 24  
 25

26 13. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 13 as  
 27 follows:  
 28

1           A.    **“In *Stevenson*, the Court analyzed several lines of documentary evidence and the**  
 2                   **administrative record in Findings that the disputed employee classification did not exist.**  
 3                   **Following the Court’s precedence, the Hearing Officer considered the administrative record**  
 4                   **and the preponderance of evidence in Findings that the Applicants retired from the Deputy**  
 5                   **Sheriff grade assigned to jail/custody operations, and were required to work planned,**  
 6                   **mandatory overtime as a part of their normal working hours that included time coded as**  
 7                   **6FE.”** OCERS objects to this fact, as there is no grade/class of “Deputy Sheriff grade  
 8                   assigned to jail/custody operations.” The grade/class of Deputy Sheriff Is and grade/class of  
 9                   Deputy Sheriff IIs were assigned to work the jails in custody operations. They are separate  
 10                  and distinct grades/classes with different rates of pay. The County’s office documents  
 11                  establish the grade/class/rate of pay as does the MOU. The applicable MOUs listed both  
 12                  Deputy Sheriff Is and Deputy Sheriff IIs as separate grades/classes. [See AR 1356, 1563,  
 13                  1582.]  
 14

15  
 16       14. OCERS has no objection to the Hearing Officer’s Proposed Findings of Fact listed under number

17           14. **“Government Code § 31461(b)(3) makes it clear that payments for additional services**  
 18           **rendered outside of normal working hours, whether paid in a lump sum or otherwise does not**  
 19           **constitute compensation earnable.”**  
 20

21       15. OCERS objects to the Hearing Officer’s Proposed Findings of Fact listed under number 15 as follows:

22           A.    **“The preponderance of evidence indicates that the 6FE overtime worked by the**  
 23                   **Applicants was not for additional services, or for time worked outside of normal working**  
 24                   **hours.”** OCERS objects to this grounds that the .5 hour worked once a pay period is not  
 25                   normal working hours as it is not ordinarily worked by all other members in the same  
 26                   grade/class/rate of pay as the Applicants, who were both Deputy Sheriff IIs. The overwhelming  
 27                   evidence established that there was no class of “Deputy Sheriffs” assigned to the jails. The  
 28

1 preponderance of the evidence demonstrated that the official County approved documentation  
2 establishing grades/classes/rate of pays established the Deputy Sheriff II as one grade/class that  
3 worked on the same rate of pay.

4  
5 The pay scale was established by the County. The County established the positions and  
6 titles for each of the Applicants, showed the pay rate for each, was posted on the County's  
7 website, and thus accessible and available for public review. None of the official County  
8 documents listed a grade/class/pay rate for a "Deputy Sheriffs assigned to the jail." Moreover,  
9 the County, the AOCDS and the Applicants via ratification of the MOUs, established the  
10 classes within the OCSO, which did not include a class or grade of "Deputy Sheriffs assigned  
11 to the jail." The term "Deputy Sheriffs assigned to the jail" is just a substitution for the term  
12 "Custody Deputies" which does not exist.

13  
14 Finally, the normal working hours constituted the 80 hours of regular hours worked in  
15 a two-week pay period. This was demonstrated by the Applicants' time payrolls, and testimony  
16 of Ms. Ramos. The regular work hours were 80 hours within a two-week pay period. This is  
17 the normal work hours set by the employer, 80 regular work hours per pay period.

18 Anything over 80 hours was overtime.

19  
20 16. OCERS has no objections to the Hearing Officer's Proposed Findings of Fact listed under number 16.

21 **A. The Supreme Court in *Ventura* discussed overtime in the context of the number of days**  
22 **ordinarily worked. The Court referenced a standard workweek (or month) and made**  
23 **reference to "overtime" as extra hours. The Court held that with the exception of overtime**  
24 **pay, items of compensation paid in cash, even if not earned by all employees in the same**  
25 **grade or class, must be included in the "compensation earnable" and "final compensation"**  
26 **on which an employee's pension is based. (*Ventura* (1997) 16 Cal.4th 483, 487, 500.)**

27  
28 17. OCERS has no objections to the Hearing Officer's Proposed Findings of Fact listed under number 17.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A. **“In *Ventura*, the Supreme Court also stated, “Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute.” (*Ventura*, supra, 16 Cal.4th at page 490.)”**

Respectfully submitted,

ORANGE COUNTY EMPLOYEES  
RETIREMENT SYSTEM

DATED: November 29, 2021

By *Dawn M. Matsuo*  
DAWN M. MATSUO  
Attorney at Law

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JACOB A. KALINSKI, SBN 233709  
RAINS LUCIA STERN ST. PHALLE & SILVER, PC  
1428 2<sup>nd</sup> Street, Suite 200  
Santa Monica, CA 90401  
Tel: 310.393.1486  
Fax: 310.395.5801  
E-mail: JKalinski@RLSlawyers.com

**FILED**  
Orange County Employees  
Retirement System  
**DEC 17 2021**  
By B. Singleton, Clerk  
of the Hearing Officer

**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

IN RE:

ROBERT SZEWCZYK and RODNEY  
MORIKAWA,

APPLICANTS.

CASE NOS. 0014-106996, 0012-119403  
[Hearing Officer: Duane Bennett, Esq.]

**APPLICANTS' RESPONSES TO  
RESPONDENT'S OBJECTIONS TO  
HEARING OFFICER'S PROPOSED  
FINDINGS OF FACT CONCLUSIONS  
AND RECOMMENDATION**



1 **I. INTRODUCTION**

2 Applicants Robert Szewczyk and Rodney Morikawa (“Applicants”) hereby submit their  
 3 response to the objections of Respondent Orange County Retirement System (“OCERS”) to  
 4 Hearing Officer Duane Bennett’s Proposed Findings of Fact Conclusions and  
 5 Recommendation (“Hearing Officer’s Recommendation”). Applicants concur with the  
 6 Recommendation that the compensation they received, coded 6FE, is “compensation earnable”  
 7 for the purposes of calculating their retirement benefits and that their final calculation  
 8 allowances should be adjusted retroactively to the dates of their respective retirements.

9 Applicants provide the following responses to OCERS’ specific objections:

10 **Proposed Finding of Fact No. 1:**

11 **A. “The Applicants were grandfathered into the Deputy Sheriff grade assigned to**  
 12 **Orange County corrections facilities.”**

13 OCERS objects because it contends there is no “Deputy Sheriff grade assigned to  
 14 Orange County corrections facilities”. However, there is no law that requires that the term  
 15 class or grade as set forth in Government Code section 31461 or OCERS Resolution 98-001  
 16 can only refer to a civil service classification, such as Deputy Sheriff II. In fact, the Job  
 17 Number Overtime Coding document describing 6FE compensation uses the term  
 18 “Classification” to describe all deputy sheriffs, not specifically a Deputy Sheriff I or a Deputy  
 19 Sheriff II. (AR 1597.) OCERS’ witness Diane Ramos, a payroll manager in the Orange  
 20 County Sheriff’s Department (RT 188), explained when describing the document: “And the  
 21 final character, E, is the classification code of the employee working that overtime. **So it**  
 22 **would be a deputy sheriff.”** (RT 190, emphasis added.)

23 Here the Department’s deputy sheriffs assigned to work in the jail facilities (“Custody  
 24 Deputies”) are a large and distinct class or grade of employees which should be used to  
 25 determine whether the 6FE compensation is received for time ordinarily worked by others.  
 26 Over the past five years, the number of Custody Deputies is generally around 630. The  
 27 undisputed evidence showed that 90% of the Custody Deputies work the platoon schedule  
 28 requiring the extra half hour of overtime. (RT 156.)

1 The Jail Operation (Custody) is one of six distinct commands in the Department. (AR  
2 2692; RT 147.) Custody Deputies are very distinct from Patrol Deputies in that they provide  
3 completely different services. (RT 33-34.) There is a custody specific manual that has existed  
4 since at least 1995. (RT 26; see AR 1618.) People call deputies working in the jails “custody  
5 deputies” all the time.” (RT 280.)

6 As was made plain throughout the hearing, some deputy sheriffs, such as Applicants,  
7 make a career choice to work their entire career in the jails. (RT 34, 278, 316.) Custody  
8 Deputies receive special training that is unique to them, including, for example, training on  
9 California Code Title 15 (RT 302), the Prison Rape Elimination Act (RT 300-301) and ethics  
10 (RT 303). Furthermore, an individual cannot promote or transfer (in the case of a Deputy  
11 Sheriff II) from Custody to Patrol without taking a state-mandated Field Training Program and  
12 going through a probationary period. (RT 176.)

13 It is undisputed that, in or about 2008, the Department had a shift in philosophy  
14 regarding Deputy Sheriff IIs. Prior to the change, a Deputy Sheriff I could promote to Deputy  
15 Sheriff II and remain in the jails. Furthermore, being a Deputy Sheriff II in the jails had  
16 meaning because Deputy Sheriff IIs were generally given duties of greater responsibility, such  
17 as guard station. (RT 267.) After that time, however, an individual promoted to Deputy  
18 Sheriff II was no longer permitted to work in custody. (RT 40-41.) And although Deputy  
19 Sheriff IIs already in the jails were allowed to continue to work in the jails after the change  
20 (RT 41-42), any distinction between Deputy Sheriff Is and Deputy Sheriff IIs was erased with  
21 the change in 2008 (RT 145) and Deputy Sheriff IIs in the jails began performing exactly as  
22 Deputy Sheriff Is did. (RT 298.) “But, basically, what happened is that CSAs took over the  
23 jobs of most Deputy IIs. And the Deputy IIs now were doing the same job as Deputy -- the  
24 same job as a Deputy Sheriff I.” (RT 270.)

25 Because Custody Deputies are a distinct class or grade, the phrase “ordinarily worked  
26 by persons in the same grade or class of positions” should be interpreted to mean a “Custody  
27 Deputy.”

28 As set forth in the Hearing Officer’s Recommendation, starting at pg. 37:

3

---

APPLICANTS’ RESPONSES TO RESPONDENT’S OBJECTIONS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The MOUs reflect pay that is afforded to deputies who work night shifts in the jails, whether Deputy Sheriff Is or Deputy Sheriff IIs. The evidence indicates that only deputies assigned to the jails are eligible for such pay. As deputies working in the jails, the Applicants were eligible for this shift differential pay, as opposed to other Deputy Sheriff IIs in patrol. Such differentiation supports the analysis that the applicants were in a unique Deputy Sheriff grade or class that was recognized by the Department.

Likewise, the evidence reflects that custody transportation pay is equally available to a Deputy Sheriff I or II in jails or custody operations. Under the MOU, there appears to be little distinction between deputies assigned to jails or custody operations and various types of pay. This indicates that the Department considers a Deputy Sheriff II in jail/custody operations to be in the same, or similar, grade as Deputy Sheriff I. It is axiomatic that the vast majority of such deputies are required to work the same mandatory overtime coded 6FE.

This finding is further supported by two memorandums written on behalf of applicant Morikawa in Exhibits 8 and 9. In Exhibits 8 and 9, Departmental members Sgt. S. Steinle and Sgt. A. Olukoju stated that in each pay period, “a deputy assigned to work the 3/12 work schedule, works three (3) 11.5 hour shifts one week and three (3) 11.5 hour shifts and one (1) 11 hour shift the next week for a total of 80 hours. The day of the 11 hour shift, deputies are required to work .5 hours, paid as OT, to assure appropriate staffing levels.

*“This is overtime is coded on timesheets and payroll detail as 6FE and was ordinarily worked by all in the same grade/class/rate of pay and is part of the deputy’s normal tour of duty.”* (Emphasis added.)

As discussed above, Assistant Sheriff Briggs and Jeffery Weaver testified regarding the same beliefs and sentiments, stating that the overtime worked by the Applicants was the same overtime ordinarily required to be worked by deputies assigned to jails and custody operations. By implication, it follows that the Department and MOU reflect that the Applicants were in the same (or similar) grade or class as Deputy Sheriff Is assigned to custody and jail operations (footnote omitted).

\*\*\*

The preponderance of evidence regarding the Sheriff’s

4

---

APPLICANTS’ RESPONSES TO RESPONDENT’S OBJECTIONS

1 Departmental philosophy, scheduling, patterns and practices  
 2 reveals that the grade of Deputy Sheriff I and Deputy Sheriff II  
 3 assigned to custody operations is a distinction without a  
 4 difference. In essence, the Department/employer established a  
 5 class or grade of Deputy Sheriffs assigned to custody and jail  
 6 operations that is interchangeable in scheduling, functions and  
 7 duties. This is true regardless of whether the employee serves as  
 8 a Deputy Sheriff I or Deputy Sheriff II assigned to custody  
 9 operations.

10 California law establishes that a member's employer  
 11 determines the member's "grade or class of positions" within  
 12 parameters established by statute. CERL does not define "grade  
 13 or class of positions." The testimony from Asst. Sheriff Briggs  
 14 and Jeffery Weaver underscores this point, and evidences the fact  
 15 that the Department has determined that the grade of Deputy  
 16 Sheriff I and Deputy Sheriff II in custody operations is one and  
 17 the same.

18 **B. "the Deputy Sheriff grade assigned to Orange County corrections facilities."**

19 As above, OCERS' objection is based on its contention that there is no "Deputy Sheriff  
 20 grade assigned to Orange County corrections facilities". For the reasons set forth above, it is  
 21 incorrect.

22 **Proposed Finding of Fact No. 2:**

23 **A. "regarding Deputy Sheriff IIs and patrol assignments"**

24 OCERS contends the phrase is vague and ambiguous. It is clear that the Hearing  
 25 Officer is referring to the change in philosophy regarding Deputy Sheriff Is and Deputy Sheriff  
 26 IIs.

27 In or about 2008, the Department had a shift in philosophy regarding Deputy Sheriff  
 28 IIs. According to Szewczyk, "...when I first started, you had ...Deputy IIs ... not only the  
 guard station, you had them in the housing modules. So you would have a Deputy II in there,  
 and you would have ... Deputy Is as prowler deputies to assist those Deputy IIs. And then the  
 Deputy IIs would direct the Deputy Is on what to do." (RT 267.)

Around 2008, the Department created a new classification of employee called Custody  
 Service Assistants, who were used to replace Deputy Sheriff IIs in guard stations. As of that

1 time, an individual promoted to Deputy Sheriff II was no longer permitted to work in Custody.  
 2 (RT 40-41.) Since approximately 2009 or 2010, when an individual promotes from Deputy  
 3 Sheriff I to Deputy Sheriff II, the individual leaves the jails and goes to patrol. (RT 40-41,  
 4 143.) There is no longer an ability to be promoted from Deputy Sheriff I to Deputy Sheriff II  
 5 and remain in the jails<sup>1</sup>. (RT 78.)

6 However, individuals who were promoted to Deputy Sheriff II prior to 2008 and who  
 7 remained in custody were “grandfathered” in such that they were allowed to retain their  
 8 Deputy Sheriff II classification and remain in the jails<sup>2</sup>. (RT 41-42.) The Deputy Sheriff IIs  
 9 who were in Custody at the time moved out of their traditional roles in the guard stations and  
 10 senior positions and instead performed the same work as Deputy Sheriff Is. (RT 145; 270.)  
 11 Answering a question from Hearing Officer Bennett about whether the duties of Deputy Sheriff  
 12 Is and IIs in the jails were different, Szewczyk explained,

13 When I first started they were different. Like I said, a Deputy  
 14 Sheriff II was more experienced and had a lot more  
 15 responsibilities. And -- Well, so you had a lot more experience,  
 16 and you were kind of like a supervisor of the Deputy Sheriff Is. If  
 17 something went wrong, not only did that Deputy I get in trouble,  
 18 you got in trouble if -- if they were on your floor. But now, the  
 19 fact is there is no -- nothing distinguishable between -- any  
 20 Deputy Sheriff I or II can work anywhere in the jail -- anywhere  
 21 in the jails.

22 (RT 298.)

23 **Proposed Finding of Fact No. 3:**

24 **A. “The Applicants testified regarding their reasons for remaining in their  
 25 Deputy Sheriff II custody or jail assignments, as opposed to seeking a transfer  
 26 to patrol.”**

27 OCERS contends the above finding is irrelevant. However, the above finding is

28 <sup>1</sup> If a Deputy Sheriff I promoted to Deputy Sheriff II, went on patrol and either wanted to go  
 back to the jails or failed in patrol, he or she would only be able to return to jails as a Deputy  
 Sheriff I. (RT 41, 170.)

<sup>2</sup> If a Deputy Sheriff II went out on patrol and did not pass probation, they would return to the  
 jail as a Deputy Sheriff I. (RT 232.)

1 relevant to show that Custody Deputies are a distinct grade.

2 **Proposed Finding of Fact No. 4:**

3 A. **“Pursuant to directives of the Sheriff’s Department, the duties and**  
4 **responsibilities of Deputy Sheriff Is and Deputy Sheriff IIs assigned to**  
5 **jail/custody operations are interchangeable.”**

6 OCERS contends the above finding is irrelevant. However, the above finding is  
7 relevant to show that Custody Deputies are a distinct grade.

8 **Proposed Finding of Fact No. 5:**

9 A. **“The Deputy Sheriff grade assigned to Orange County jail or custody**  
10 **operations.”**

11 As above, OCERS’ objections is based on its contention that there is no “Deputy  
12 Sheriff grade assigned to Orange County corrections facilities”. For the reasons set forth  
13 above, it is incorrect.

14 **Proposed Finding of Fact No. 6:**

15 A. **“The applicable MOUs recognize a grade of Deputy Sheriffs assigned to**  
16 **jail/custody operations, regardless of whether they serve as a Deputy Sheriff I**  
17 **or Deputy Sheriff II.”**

18 As set forth in the Hearing Officer’s Recommendation, starting at pg. 37:

19 The MOUs reflect pay that is afforded to deputies who  
20 work night shifts in the jails, whether Deputy Sheriff Is or Deputy  
21 Sheriff IIs. The evidence indicates that only deputies assigned to  
22 the jails are eligible for such pay. As deputies working in the  
23 jails, the Applicants were eligible for this shift differential pay, as  
24 opposed to other Deputy Sheriff IIs in patrol. Such  
differentiation supports the analysis that the applicants were in a  
unique Deputy Sheriff grade or class that was recognized by the  
Department.

25 Likewise, the evidence reflects that custody transportation  
26 pay is equally available to a Deputy Sheriff I or II in jails or  
27 custody operations. Under the MOU, there appears to be little  
28 distinction between deputies assigned to jails or custody  
operations and various types of pay. This indicates that the  
Department considers a Deputy Sheriff II in jail/custody

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

operations to be in the same, or similar, grade as Deputy Sheriff  
I. It is axiomatic that the vast majority of such deputies are  
required to work the same mandatory overtime coded 6FE.

**Proposed Finding of Fact No. 7:**

OCERS had no objection to this proposed finding.

**Proposed Finding of Fact No. 8:**

**A. “Overtime coded as 6FE is not incidental and cannot be voluntarily  
increased.”**

OCERS objected that this language is vague and ambiguous. OCERS is incorrect. .  
There was ample testimony at the hearing demonstrating that the 6FE compensation was not  
incidental and could not be voluntarily increased. As Assistant Sheriff Briggs explained, “you  
can’t get more of it, can’t get less of it, and you don’t have a choice whether you work it.” (RT  
160.) Weaver testified that “planned overtime” means expected or prescheduled overtime.  
(RT 58.) All employees assigned to a platoon schedule receive 6FE compensation. The amount  
of 6FE compensation never changes, *i.e.*, it is always paid for one half hour and always at the  
same rate. A deputy cannot sign up for more 6FE compensation. (RT 65.) OCERS’ own  
witness, Diane Ramos, a payroll manager in the Sheriff’s Department, agreed that the overtime  
created by the platoon schedule “is planned because it’s part of that schedule for that  
foreseeable future.” (RT 217.) She also concurred that the overtime created by the platoon  
schedule is not overtime that an individual can volunteer for. (RT 217.)

**Proposed Finding of Fact No. 9:**

**A. “Overtime coded as 6FE does not constitute ‘true overtime’ as defined by  
Board Resolution 98-001.”**

OCERS objects to this language on the grounds that the .5 hour worked once every  
pay period is overtime that was not worked by everyone in the same grade, class or pay rate.  
First, OCERS mischaracterizes its own resolution, Resolution 98-001, which provides, in  
relevant part:

- 1. Elements to be Included in “Compensation Earnable”

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Remuneration earned and receivable in cash (under the applicable MOU) to the retiring employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be included in “compensation earnable,” including but not limited to the following items of compensation, and others substantially similar to them:

- Base salary and Wages
- Bilingual Premium Pay
- Educational Incentive (“POST”) Pay
- Aircraft Rescue Firefighting
- Paramedic Pay
- Motorcycle Bonus
- Emergency Dispatch Pay
- Field Training Officer Bonus
- Shift differential pay
- Confined Space Pay
- Longevity Incentive
- Automobile Allowance (paid in cash or to extent automobile provided for personal use and declared as income)
- Uniform Allowance
- Uniform Maintenance Allowance
- Payoffs of Vacation and Sick Leave and Holiday to the extent earned (pro-rated on a monthly basis), not taken as time off, and permitted to be cashed out (pro-rated on a monthly basis) under the applicable MOU (regardless of when actually cashed out)
- Employee Contributions to Deferred Compensation Plan
- “Overtime” required to be worked that is ordinarily worked by others in the same grade/class/rate of pay**
- Compensatory Time (if not excluded as “true overtime” (see definition in section 2) and to the extent in excess of minimum required reserve)
- “Madera” pay
- Additional compensation for Scheduled Meal Periods
- Flexible Benefits (“Cafeteria Plan”) to the Extent paid in Cash (applicable to members retiring before January 1, 1991)

2. Elements to be Excluded From “Compensation Earnable”.

Remuneration other value to the employee neither earned or payable in cash to the employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be excluded from “compensation earnable”, including but not limited to the following items, and others substantially similar to them:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**True Overtime (amounts paid for working in excess of the time required and ordinarily worked by others in the same grade/class.)**

- Employer Contribution to Deferred Compensation Plan
- Employer Contributions to Retirement System
- Employer “Pick-Up” of Employee Contributions to Retirement System
- Payoffs of Vacation and Sick Leave and Holiday Pay, to the extent neither earned nor permitted to be cashed-out under the applicable MOU, regardless of when actually cashed-out
- Flexible Benefits (“Cafeteria Plan”) provided in-kind
- Flexible Benefits (“Cafeteria Plan”) paid in cash to the extent paid to members retiring on and after January 1, 1991
- Terminal (“Final”) Pay, to the extent not included per Sec .1, above
- Expense Reimbursements
- In-kind Advantages (e.g., food, lodging, board, laundry, fuel) Fees, Licenses, Memberships provided to member by the employer

(AR 1341-1342, bold added, underline in original.)

Noticeably absent from the language of the Resolution is the word “everyone”. Furthermore, as set forth in response to OCERS’ objection to Proposed Finding No. 1, Applicants belonged to the grade of Deputy Sheriff assigned to Orange County corrections facilities.

**B. “nor does it represent time worked in excess of the time ordinarily worked by the Applicants in their jail/custody assignments.”**

OCERS’ contends that, despite all evidence, that Applicants normal schedule was 80 hours every two weeks. The Department’s 630 Custody Deputies ordinarily work the platoon schedule which is seven 11.5 hours shifts every two weeks for a total of 80.5 hours. (RT 157.)

**Proposed Finding of Fact No. 10:**

**A. “Overtime coded as 6FE is budgeted, planned, scheduled, mandated and required by the Department for the Deputy Sheriff grade assigned to jail/custody operations.”**

1 As above, OCERS’ objection is based on its contention that there is no “Deputy Sheriff  
2 grade assigned to Orange County corrections facilities”. For the reasons set forth above, it is  
3 incorrect.

4 **Proposed Finding of Fact No. 11:**

5 A. **“There is substantial evidence that overtime worked by the Applicants  
6 constituted ‘overtime required to be worked that is ordinarily worked by  
7 others in the same Deputy Sheriff grade/class/rate of pay.’”**

8 As above, OCERS’ objection is based on its contention that there is no “Deputy Sheriff  
9 grade assigned to Orange County corrections facilities”. For the reasons set forth above, it is  
10 incorrect.

11 **Proposed Finding of Fact No. 12:**

12 A. **“There is a preponderance of evidence that 6FE overtime required to be  
13 worked by the Applicants is substantially similar to other pensionable types of  
14 pay, such as shift differential and assignment pay.”**

15 OCERS Resolution 98-001 provides, in relevant part:

16 1. Elements to be Included in “Compensation Earnable”  
17 Remuneration earned and receivable in cash (under the applicable  
18 MOU) to the retiring employee during the final compensation  
19 period for working the ordinary time required of other employees  
20 in the same grade/class shall be included in “compensation  
earnable,” including but not limited to the following items of  
compensation, and others **substantially similar** to them:

- 21 [\*\*\*]  
Motorcycle Bonus
- 22 [\*\*\*]  
Field Training Officer Bonus
- 23 Shift differential pay
- 24 [\*\*\*]

25 (AR 1341-1342, bold added, underline in original.)

26 The above items– Motorcycle Bonus Pay, Filed Training Officer Bonus Pay and Shift  
27 Differential Pay–are all assignment pays included in compensation earnable. (RT 60-61.)

28 Moreover, OCERS’ Master Pay Item Spreadsheet (AR 1587-1596) also shows that Jail

1 Assignment Pay is included in compensation earnable.

2 The assignment pay which is perhaps closest to the 6FE compensation is the shift  
3 differential pay. Ramos testified that the shift differential bonus is only paid to those who work  
4 in the jail per the MOU. Thus, even if a deputy works the exact same shift, but is on patrol,  
5 he/she does not receive the differential. (RT 255-256.) The shift differential bonus is paid to  
6 employees who work late hours in the jails.

7 Similarly, the 6FE compensation is paid to employees who work the platoon schedule  
8 in the jails. Basically, the 6FE compensation is like a jail assignment pay for those who work  
9 the platoon schedule. Assistant Sheriff Briggs agreed that the 6FE compensation is  
10 substantially like jail assignment pay. (RT 161-162.) Although the 6FE compensation is  
11 referred to as "Overtime" because it is compensation for hours over 80, in essence it is actually  
12 akin to an assignment pay provided to Custody Deputies, who are required by their employers  
13 to work the platoon schedule in order to meet their employer's needs. To illustrate, establishing  
14 an overtime threshold of 80.5 hours in a two-week period instead of 80 and giving applicants  
15 the requisite assignment pay would put applicants in the exact same financial position as  
16 providing overtime compensation for the extra half hour they work beyond 80 hours in a two-  
17 week period. According to Ramos, the reason that such a shift cannot happen is not that there is  
18 a legal prohibition precluding the County from doing so; rather the County's software system  
19 will not allow it. (RT 220.)

20 During the hearing, Susan Jenike, the Assistant CEO, External Operations for OCERS,  
21 was asked why the 6FE compensation is considered overtime. She answered, "Because it's  
22 paid at time and a half and reported to OCERS as overtime." Later, she conceded that if it  
23 were regarded as an assignment pay, OCERS would have no objection to including it in  
24 compensation earnable. (RT 406.) Thus, it is evident that OCERS has placed the form the  
25 6FE compensation has taken (overtime), over the substance behind why that compensation is  
26 received (compensating employees for a platoon schedule). That is not a result that passes  
27 serious scrutiny.

28 OCERS attempted to distinguish the shift differential pay by arguing:

12

---

APPLICANTS' RESPONSES TO RESPONDENT'S OBJECTIONS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Moreover, the \$100 shift differential pay is paid in proportion to the number of regular hours the employee works. It is paid \$100 per month when the deputy works the requisite number of regular hours in a month, i.e. 80 per pay period. If the deputy works less than the requisite number of hours per month, he would not be paid the entire \$100. This is demonstrated in the pay stub Morikawa submitted. [AR 698.]

Applicants are not contending that shift differential is identical to the 6FE compensation. Rather, applicants contend that the 6FE functions in a **substantially similar** manner to the shift differential. It provides additional compensation to employees who are required to work a particular schedule.

**Proposed Finding of Fact No. 13:**

A. **“In Stevenson, the Court analyzed several lines of documentary evidence and the administrative record in Findings that the disputed employee classification did not exist. Following the Court’s precedence, the Hearing Officer considered the administrative record and the preponderance of the evidence in Findings that the Applicants retired from the Deputy Sheriff grade assigned to jail/custody operations, and were required to work planned, mandatory overtime as part of their normal working hours that the included time coded as 6FE.”**

As above, OCERS’ objection is based on its contention that there is no “Deputy Sheriff grade assigned to Orange County corrections facilities”. For the reasons set forth above, it is incorrect.

**Proposed Finding of Fact No. 14:**

OCERS had no objection to this proposed finding.

**Proposed Finding of Fact No. 15:**

A. **“The preponderance of evidence indicates that the 6FE overtime worked by the Applicants was not for additional services, or for time worked outside of normal working hours.”**

OCERS’ contends that, the extra .5 hour worked once a pay period is not “normal

1 working hours.” The evidence demonstrates that the Department’s 630 Custody Deputies  
2 ordinarily work the platoon schedule which is seven 11.5 hours shifts every two weeks for a  
3 total of 80.5 hours. (RT 157.)

4 **Proposed Finding of Fact No. 16:**

5 OCERS had no objection to this proposed finding.

6 **Proposed Finding of Fact No. 17:**

7 OCERS had no objection to this proposed finding.

8

9 Dated: December 17, 2021

Respectfully submitted,

**RAINS LUCIA STERN  
ST. PHALLE & SILVER, PC**

10

11

12

13

By:  
Jacob A. Kalinski  
Attorneys for Applicants, Robert  
Szewczyk and Rodney Morikawa

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



## Memorandum

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Brenda Shott, Assistant CEO, Finance and Internal Operations  
**SUBJECT:** **AUDIT COMMITTEE - FINANCIAL AUDITOR SERVICES CONTRACT AWARD**

### Recommendation

The Audit Committee recommends the Board of Retirement award a contract for financial auditor services to Moss Adams LLP, subject to satisfactory negotiation of terms.

### Background/Discussion

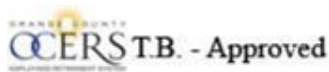
At its June 4, 2021 meeting, the Audit Committee approved distribution of a Request for Proposal (RFP) to initiate a search for a financial auditor, a designated named service provider in the Board’s Procurement and Contracting Policy. The RFP was released in July 2021 and the top three proposers were selected for interviews. On December 15, 2021, the Audit Committee listened to separate presentations by Eide Bailly LLP, Macias, Gini & O’Connell LLP, and Moss Adams LLP. Following all the presentations, the Committee discussed the quality of the interviews, responses to questions from the Committee during the presentations, and the proposals from each firm. Moss Adams LLP was the firm selected to be awarded a contract for financial auditor services pending approval by the full Board of Retirement and subject to satisfactory negotiation of terms.

Moss Adams, LLP’s proposed fees are as follows:

| Audit for the Year Ending | Total Fees |
|---------------------------|------------|
| December 31, 2021         | \$115,800  |
| December 31, 2022         | \$117,300  |
| December 31, 2023         | \$118,500  |

Attached to this memo are the staff report prepared for the Audit Committee, which summarizes the RFP process and the fees proposed by the three finalist firms and Moss Adams, LLP’s proposal.

### Submitted by:



Tracy Bowman  
 Director of Finance

### Approved by:



Brenda Shott  
 Assistant CEO, Finance and Internal Operations



## Memorandum

---

**DATE:** December 15, 2021  
**TO:** Members of the Audit Committee  
**FROM:** Brenda Shott, Assistant CEO, Finance & Internal Operations  
**SUBJECT:** Financial Auditor Interviews

---

### Recommendation

Staff recommends (1) selecting one of the three finalists chosen to make an oral presentation at the December 15, 2021 Audit Committee meeting to serve as OCERS financial auditor based on the firm's presentation, responsiveness to the Audit Committee's questions, and the written proposal submitted; and (2) after conducting such interviews, that the Audit Committee recommend to the Board of Retirement to award a contract for financial auditor services to the selected finalist, subject to satisfactory negotiation of terms.

### Background/Discussion

At its June 4, 2021 meeting, the Audit Committee approved distribution of a Request for Proposal (RFP) to initiate a search for a financial auditor. The Audit Committee Charter states that the Audit Committee's key areas of responsibility includes the oversight of External Auditors, including conducting the solicitation for the independent financial auditor, approving the RFPs or other solicitation vehicle, reviewing candidate qualifications and conducting interviews, and recommend one or more finalists to the Board for appointment. In addition, the Board's Procurement and Contracting Policy (Policy) designates the financial auditor as a "Named Service Provider." Under the Policy, all contracts with Named Service Providers are limited to a term of a total of six years. The current contract with Macias Gini & O'Connell, LLP (MGO) for auditing OCERS annual financial statements was completed with the approval of OCERS audited financial statements for the year ended December 31, 2020 at the June 21, 2021 Board meeting.

### Selection Process

In July 2021, a RFP for financial auditor services was posted on OCERS' website and released to various affiliates in addition to directly soliciting six accounting firms. OCERS received seven proposals in response to the RFP:

- Brown Armstrong Accounting Corporation
- CliftonLarsonAllen LLP (CLA)
- Eide Bailly LLP
- Lance, Soll & Lunghard, LLP (LSL)
- Macias Gini & O'Connell LLP (MGO)
- Moss Adams LLP
- The Pun Group LLP



## Memorandum

---

All proposals received were reviewed for responsiveness based on the following criteria:

|                                   |     |
|-----------------------------------|-----|
| Experience & Reputation           | 35% |
| Team Quality Assigned to OCERS    | 30% |
| Pricing & Value                   | 25% |
| RFP Proposal Quality/Presentation | 10% |

The review panel, consisting of five staff members, three of whom are certified public accountants, thoroughly reviewed all proposals and scored them on each criterion. Based on the total score from all panelists, the firms were ranked and the top three proposers who scored far above the other four were determined to be the most qualified to provide OCERS with financial auditor services and selected for interviews:

- Eide Bailly
- MGO
- Moss Adams

Please note that all references to the finalists in this memorandum and the documents that follow are in alphabetical order based on firm names.

### ***Interview Process***

The interviews will take place at the beginning of the December 15, 2021 Audit Committee meeting. The planned procedure is for an approximately 45-minute interview with each firm as follows:

- Each candidate will be given ten minutes to make a general presentation about their firm
- The Audit Committee will ask the same 5 questions to each firm which will not be provided to the candidates ahead of time
- The Audit Committee may ask the candidate additional or follow-up questions
- Presentation to conclude with candidate summary

The interview process will be explained to the candidates prior to the date of the Audit Committee. The finalist firms not being interviewed will be excused from the meeting and placed in the Zoom waiting room during the other firm's interviews. All three firms will be excused from the meeting and placed in the Zoom waiting room during the Audit Committee's deliberation and then will return to the meeting for announcement by the Audit Committee of the finalist who will be recommended to the Board of Retirement to be awarded the contract for financial auditor services.

### ***Summary of the RFP Responses***

Of the three firms selected as finalists, only one has previously provided financial auditor services to OCERS; MGO has been OCERS financial auditor since July 2010 and as previously mentioned, completed the final contract year for auditing OCERS' annual financial statements on June 21, 2021.

The summary on the following page was based solely on staff's review and understanding of the firms' RFP responses and was not reviewed by the firms prior to inclusion with the Audit Committee materials.





## Memorandum

| Category                            | Eide Bailly  | Macias Gini & O'Connell  | Moss Adams   |
|-------------------------------------|--|--|--|
| <b>Total Fees (3 years)</b>         | <b>\$340,800</b>   | <b>\$398,500</b>   | <b>\$351,600</b>   |
| Year 1                              | \$110,250  | \$128,900  | \$115,800  |
| Year 2                              | \$113,600  | *\$132,800   | \$117,300  |
| Year 3                              | \$116,950  | \$136,800  | \$118,500  |
| Number of professionals and offices | 2,640 employees; 441 in California<br>40+ offices in 14 states;<br>10 in California  | 400+ professionals<br>17 offices nationally and internationally;<br>10 in California   | 3,400+ professionals;<br>1,165 in California<br>25+ offices in 8 states;<br>11 in California   |
| Retirement Plan Experience          | <ul style="list-style-type: none"> <li>• Public Employees' Retirement System of Mississippi</li> <li>• Missouri State Employees' Retirement System</li> <li>• Oklahoma Public Employees Retirement System</li> <li>• Public Employee Retirement System of Idaho</li> <li>• South Dakota Retirement System</li> <li>• Utah Retirement System</li> <li>• Wyoming Retirement System</li> </ul> (See page 10 of proposal for full listing) | <ul style="list-style-type: none"> <li>• OCERS</li> <li>• California Public Employees Retirement System</li> <li>• California State Teachers Retirement System</li> <li>• Oregon Public Employees Retirement System</li> <li>• Sacramento City Employees' Retirement System</li> <li>• San Diego City Employees Retirement System</li> <li>• San Bernardino County Retirement Association</li> </ul> (see page 9 of proposal for full listing) | <ul style="list-style-type: none"> <li>• El Paso Firemen and Policemen's Pension Fund</li> <li>• Kansas Public Employees Retirement System</li> <li>• Los Angeles City Employees Retirement System</li> <li>• Los Angeles County Employees Retirement Association</li> <li>• New Mexico Educational Retirement Board</li> <li>• San Diego City Employees Retirement System (consulting)</li> <li>• Ventura County – Deferred Compensation Plans</li> </ul> |

\*Excludes \$6,000 for consideration of implementation of new ERP System



## Memorandum

---

The full proposals provided by each of the finalists in response to the RFP and the scoring summary are attached to this memorandum.

**Submitted by:**

A handwritten signature in blue ink, appearing to read "Tracy Bowman", written over a horizontal line.

Tracy Bowman  
Director of Finance

**Approved by:**

A handwritten signature in blue ink, appearing to read "Brenda M Shott", written over a horizontal line.

Brenda Shott  
Assistant CEO, Finance & Internal Operations



# OPPORTUNITY RISING

*PROPOSAL FOR FINANCIAL AUDITOR SERVICES FOR THE*

## **ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

---

**Kory Hoggan, Partner**

**Aaron Hamilton, Senior Manager**

Moss Adams LLP  
2040 Main Street, Suite 900  
Irvine, CA 92614  
(949)221-4000



Dear Jim:

We're excited about the opportunity to work with Orange County Employees Retirement System (OCERS). We understand you're looking for a firm to provide audit services for the fiscal year ending December 31, 2021 and continuing for the next two years ending December 31, 2022 and December 31, 2023, with an option to renew the contract, on an annual basis, for up to an additional three years.

These are challenging times for public retirement systems. The current economic conditions resulting from the COVID-19 pandemic only accentuate the pressures felt by your board and management. Budget constraints, fiduciary responsibilities, uncertain domestic and global security markets, new accounting and reporting standards, and pressures from governments and credit rating agencies to maintain or improve the funded status and minimize reported net pension liability are only a few of the hurdles that you face in effectively providing services to the County and your members.

September 3, 2021

**Jim Doezie**  
*Contracts, Risk &  
Performance  
Administrator*

**Orange County  
Employees Retirement  
System**  
2223 E. Wellington Avenue  
Suite 100  
Santa Ana, CA 92701

As OCERS considers an independent accounting firm to provide financial audit services and perform the annual audit of OCERS financial statements, we know you're seeking a firm that has the experience, resources, and qualifications to best assist you in meeting these challenges and being successful; a firm that provides a fresh perspective on your financial statements and internal procedures and can offer meaningful suggestions based on the technical standards and best practices among other public retirement systems. The firm that's the best fit will be the one that not only meets your criteria, but also clearly provides the greatest value for the investment of our time and limited resources in the audit process. We believe Moss Adams is the right choice for the following reasons:

- **Deep specialty in public employee retirement systems (PERS).** As one of the 15 largest accounting firms in the nation and the largest headquartered on the West Coast, we have the depth of resources necessary to serve OCERS with firmwide resources at our disposal. Our national PERS team serves as independent auditors to many public retirement systems. We have a deep understanding of the accounting and operational issues facing stand-alone PERS of all sizes and levels of funded status and will provide our firm's top industry professionals to OCERS.
- **Experience with audits of governmental entities.** Moss Adams is committed to serving governmental entities. We have numerous client service professionals who focus on governmental units that apply accounting principles promulgated by the Governmental Accounting Standards Board (GASB). All of the team members who'll serve OCERS specialize in providing services to governmental and PERS entities.

September 3, 2021

**Jim Doezie**  
Contracts, Risk &  
Performance  
Administrator

**Orange County  
Employees Retirement  
System**  
2223 E. Wellington Avenue  
Suite 100  
Santa Ana, CA 92701

- **Open, timely, and effective communication.** Part of the value we provide to you is a commitment to maintaining close and regular contact with you throughout the year. We're not once-a-year auditors who disappear for many months, only to return in time for the next audit. We're a hands-on resource with a bias for action and a constant resource for questions and advice.
- **Local team with national perspective.** Your audit will be staffed primarily with experienced professionals from our Orange County office. You'll have the resources you need in your own backyard, while having access to one of the largest providers of governmental and pension services in the western United States.
- **Fresh point of view.** Moss Adams and our PERS professionals have worked closely with many clients in facilitating the transition of their financial audits from other accounting firms. We'll minimize disruption to you and your staff and make the transition period as smooth as possible. Rotation of auditors assures that a fresh set of eyes is overseeing your audit. With a new perspective, we can suggest different ways to make your organization more efficient and cost effective. Our fresh viewpoint combined with our depth of experience is designed to result in a quality audit that properly assesses and responds to your unique risks and challenges.
- **Strong presence in California.** Moss Adams has long maintained a strong presence in the Golden State, growing our footprint in Southern California. We currently serve as independent auditors and consultants to several public pensions in California, including several "1937 Act" county retirement systems. With its complex maze of regulatory agencies and unique pension laws, California presents a number of challenges to retirement systems in the state—and those hoping to fulfill their fiduciary responsibilities in serving their members.

With client service and open communication placed above all else, we're enthusiastic about the opportunity to serve OCERS and to provide efficient and effective solutions for your audit and compliance needs. Moss Adams has a dedicated service group of trained professionals who perform audits and consulting for public and private sector retirement plans, and we offer year-round availability and flexibility in our scheduling to complete your audit early. We have the resources, conveniently located offices, and technical expertise to help you navigate your way to success. Thank you for your consideration of our proposal. We're excited about this opportunity and beginning a new relationship with you.

Sincerely,



**Kory Hoggan, CPA**  
Partner  
(505) 878-7214  
[kory.hoggan@mossadams.com](mailto:kory.hoggan@mossadams.com)



**Aaron Hamilton, CPA**  
Senior Manager  
(505) 837-7630  
[aaron.hamilton@mossadams.com](mailto:aaron.hamilton@mossadams.com)

# Table of Contents

|  |  |           |
|--|--|-----------|
|  | <b>Minimum Qualifications Certification – Exhibit B</b>            | <b>1</b>  |
|  | <b>Proposal Cover Page and Check List – Exhibit C</b>              | <b>2</b>  |
|  | <b>Executive Summary</b>   | <b>3</b>  |
|  | Firm Background  | 3         |
|  | Government Services Practice                                       | 4         |
|  | Deep Specialty in Public Employee Retirement Systems (PERS)        | 5         |
|  | <b>Firm Profile</b>  | <b>6</b>  |
|  | Firm History   | 6         |
|  | Ownership Structure  | 6         |
|  | Office Locations   | 6         |
|  | Organization Chart   | 7         |
|  | Number of Employees & Annual Revenues                              | 7         |
|  | Scope of Services Offered  | 7         |
|  | Specialties, Strengths, and Limitations                            | 8         |
|  | Client Retention Rate  | 8         |
|  | <b>Your Service Team</b>   | <b>9</b>  |
|  | <b>Partner Rotation</b>  | <b>15</b> |
|  | <b>Quality and Continuity of Staff</b>                             | <b>16</b> |
|  | <b>Technical Resources and Industry Involvement</b>                | <b>17</b> |
|  | <b>References</b>  | <b>19</b> |
|  | <b>Business License</b>  | <b>20</b> |
|  | <b>Standard Professional Services Contract</b>                     | <b>21</b> |
|  | <b>Fees</b>  | <b>31</b> |
|  | <b>Work Plan and Audit Approach</b>                                | <b>33</b> |
|  | Transitioning to Moss Adams  | 33        |
|  | Audit Methodology  | 34        |
|  | Proposed Segmentation of the Engagement                            | 35        |
|  | Level of Staff and Number of Hours to Be Assigned                  | 41        |
|  | Type and Extent of Sampling Techniques to Be Utilized              | 41        |
|  | Approach to Auditing IT Systems                                    | 41        |
|  | Engagement Timeline  | 42        |
|  | <b>Anticipated Potential Audit Problems</b>                        | <b>44</b> |
|  | <b>Sample Formats for Required Reports</b>                         | <b>46</b> |
|  | <b>Conflict of Interest</b>  | <b>47</b> |
|  | <b>Litigation and Disciplinary Action</b>                          | <b>48</b> |
|  | <b>Additional Information</b>                                      | <b>49</b> |
|  | Our Commitment to Being a Diverse, Inclusive, and Anti-Racist Firm | 49        |
|  | Peer Review Report   | 55        |
|  | Exceptions to the Contract   | 56        |

**Exhibit B**

**MINIMUM QUALIFICATIONS CERTIFICATION**

All firms submitting a proposal in response to this RFP are required to sign and return this attachment, along with written evidence of how the respondent meets each qualification.

The undersigned hereby certifies that it fulfills the minimum qualifications outlined below, as well as the requirements contained in the RFP.

Minimum Qualifications include:

1. The firm should have at least five (5) years prior experience in auditing governmental agencies and/or public pension funds.
2. The Engagement Partner must be licensed to practice in the State of California as a certified public accountant, and must demonstrate a strong knowledge of governmental accounting and auditing requirements based on prior experience leading audits of governmental agencies, or large pension or retirement systems with at least \$1 billion in plan net assets.
3. The firm should be licensed to practice in the state of California and be in good standing with the state.

**The undersigned hereby certifies that they are an individual authorized to bind the Firm contractually, and said signature authorizes verification of this information.**

  
 \_\_\_\_\_  
 Authorized Signature

September 3, 2021  
 \_\_\_\_\_  
 Date

Kory Hoggan, Partner  
 \_\_\_\_\_  
 Name and Title (please print)

Moss Adams LLP  
 \_\_\_\_\_  
 Name of Firm

Exhibit C

PROPOSAL COVER PAGE AND CHECK LIST (TO BE SUBMITTED IN FIRM'S LETTERHEAD)

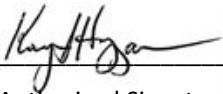
Respondent Name: Kory Hoggan, Partner for Moss Adams LLP

Respondent Address: 6565 Americas Parkway NE  
Suite 600  
Albuquerque, NM 87110

***By submitting this response, the undersigned hereby affirms and represents that they have reviewed the proposal requirements and have submitted a complete and accurate response to the best of their knowledge. By signing below, I hereby affirm that the respondent has reviewed the entire RFP and intends to comply with all requirements.***

Respondent specifically acknowledges the following:

1. Respondent possesses the required technical expertise and has sufficient capacity to provide the services outlined in the RFP.
2. Respondent has no unresolved questions regarding the RFP and believes that there are no ambiguities in the scope of services.
3. The fee schedule submitted in response to the RFP is for the entire scope of services and no extra charges or expenses will be paid by OCERS.
4. Respondent has completely disclosed to OCERS all facts bearing upon any possible interests, direct or indirect, that Respondent believes any member of OCERS, or other officer, agent, or employee of OCERS presently has, or will have, in this contract, or in the performance thereof, or in any portion of the profits thereunder.
5. Materials contained in the proposal and all correspondence and written questions submitted during the RFP process are subject to disclosure pursuant to the California Public Records Act.
6. Respondent is not currently under investigation by any state of federal regulatory agency for any reason.
7. Except as specifically noted in the proposal, respondent agrees to all of the terms and conditions included in OCERS Services Agreement.
8. The signatory below is authorized to bind the respondent contractually.

  
\_\_\_\_\_

Authorized Signature

Kory Hoggan, Partner  
\_\_\_\_\_

Name and Title (please print)

Moss Adams LLP  
\_\_\_\_\_

Name of Firm

September 3, 2021

Date



# Executive Summary

## FIRM BACKGROUND

Moss Adams is a fully integrated professional services firm dedicated to growing, managing, and protecting prosperity. With over 3,400 professionals across more than 25 locations in the market capitals of the West and beyond, we work with the world’s most innovative, dynamic, and promising clients and markets. Through a full spectrum of accounting, consulting, and wealth management services, we bring the deep industry specialization and inspired thinking our mid-market clients seek.

Since we put down roots in the Pacific Northwest more than 100 years ago, we’ve steadily expanded to serve clients not only in the West, but also across the nation and globally. Our full range of services includes accounting (assurance and tax), consulting (IT, strategy & operations, transactions, and specialty), as well as individual and institutional wealth management.

Moss Adams is one of the 15 largest US accounting and consulting firms and a founding member of Praxity, a global alliance of independent accounting firms providing clients with local expertise in the major markets of North America, South America, Europe, and Asia.

### MOSS ADAMS BY THE NUMBERS



◀ 25+  
locations

◀ 30%  
racially and ethnically  
diverse employees

◀ 3,400+  
professionals

◀ 53%  
female-identifying  
workforce

best accounting  
firms for women

– Accounting MOVE Project






awards of  
excellence

– Innovations in  
Diversity Journal

### OUR COMMITMENT TO CALIFORNIA

Moss Adams has long maintained a strong presence in the Golden State, growing our footprint in both Northern and Southern California to 11 locations with over 1,165 employees, including more than 145 partners. With its complex state and local tax structure and maze of regulatory agencies, California presents a number of challenges to businesses based in the state and those hoping to do business there. Moss Adams has the resources, conveniently located offices, and technical expertise to help you navigate your way to success.

**GOVERNMENT SERVICES PRACTICE**

|  |   |   |
|--|---|---|
|  <p><b>108</b><br/>years in business<br/>&amp; largest firm<br/>headquartered<br/>in the West</p> |  <p><b>3,890+</b><br/>single audits<br/>performed<br/>since 1997</p> |  <p><b>260+</b><br/>professionals dedicated<br/>to higher education,<br/>government, and<br/>not-for-profit clients</p>          |
|  |  <p><b>300+</b><br/>government<br/>entities served</p>               |  <p><b>1,800+</b><br/>audits of government<br/>pension, health, and<br/>other employee benefit<br/>plans and trusts annually</p> |

We recognize government organizations are accountable to many different constituencies—oversight agencies, audit committees, elected officials, taxpayers—all with different expectations and demands. That’s why we commit significant personnel and resources to our Government Services Practice, building technical expertise in all areas of government. We have several experienced partners and senior managers who lead audit engagements for over 300 government entities including state agencies; cities and counties; public colleges and universities; special purpose governments including ports, utility districts, and transit agencies; public retirement funds; and others.

Moss Adams has a group of specialized practices with more than 260 professionals who specialize in serving tax-exempt entities including governments, higher education institutions, not-for-profits, tribal and gaming entities, energy and utility entities, and federal contractors. Below is detailed information about our government experience:

| Service   | Our Experience  |
|---|---|
| GASB Pronouncements   | As a result of our extensive involvement with GASB working groups and committees, we keep up with the latest accounting standards and help many of our clients with implementation.   |
| GFOA Certificate of Excellence in Financial Reporting Program                     | We’ve assisted each of our clients that participate in the Annual Comprehensive Financial Report program, including the Los Angeles City Employees’ Retirement System; Richmond Retirement System; American Samoa Government Employees Retirement Fund; City of Albuquerque, New Mexico; City of El Paso, Texas; City of Portland, Oregon; Port of Seattle, Washington; City of Medford, Oregon; City of Bend, Oregon; and many others.   |
| Audits of Government Pension, Health, and Other Employee Benefit Plans and Trusts | Moss Adams audits over 1,800 plans of all types annually. Our retirement plan clients range in size from 100 to 100,000 participants with \$100,000 to over \$10 billion in assets. We audit large retirement and retiree health plans such as New Mexico Educational Retirement Board, New Mexico Public Employees Retirement Association, Kansas Public Employees Retirement System, Los Angeles City Employees’ Retirement System, County of Ventura, and American Samoa Government Employees’ Retirement Fund, to name a few. |

**DEEP SPECIALTY IN PUBLIC EMPLOYEE RETIREMENT SYSTEMS (PERS)**

As one of the 15 largest accounting firms in the nation and with the third largest audit practice of employee benefit plans, we have the depth of resources necessary to serve OCERS with firmwide professionals at our disposal. Our national PERS team serves as independent auditors to many public retirement systems, such as the following:

| Selected Public Employee Retirement and OPEB Systems Audited  |  |
|---|--|
| <ul style="list-style-type: none"> <li>• American Samoa Government Employees' Retirement Fund</li> <li>• Antelope Valley Hospital Medical Center Retirement Plan</li> <li>• City of Portland Fire and Police Disability and Retirement Fund</li> <li>• El Paso Firemen and Policemen's Pension Fund</li> <li>• Kansas Public Employees' Retirement System</li> <li>• Los Angeles City Employees' Retirement System</li> </ul> | <ul style="list-style-type: none"> <li>• New Mexico Educational Retirement Board</li> <li>• New Mexico Retiree Health Care Authority</li> <li>• Public Employees Retirement Association Deferred Compensation Plan of New Mexico</li> <li>• Richmond Retirement System</li> <li>• Sacramento County Section 457 Plan</li> <li>• Salinas Valley Memorial Healthcare District Employees Pension Plan</li> <li>• Spokane Employees' Retirement System</li> <li>• The City of Seattle Voluntary Deferred Compensation Plan and Trust</li> <li>• Ventura County Section 457 Plan</li> </ul> |

We have a deep understanding of the accounting and operational issues facing stand-alone PERS and governmental defined contribution plans and will provide our firm's top industry professionals to OCERS.

Kory Hoggan, who has over 20 years of experience serving PERS and employee benefit plan clients, will serve as the engagement leader. Kory serves on the AICPA State & Local Government Expert Panel Task Force for Public Employee Retirement Systems, is a frequent speaker at the AICPA National Conference for Employee Benefit Plans on the topic of governmental pensions and leads panels and presentations on retirement and OPEB systems to local and national audiences.

---

## Firm Profile

### FIRM HISTORY

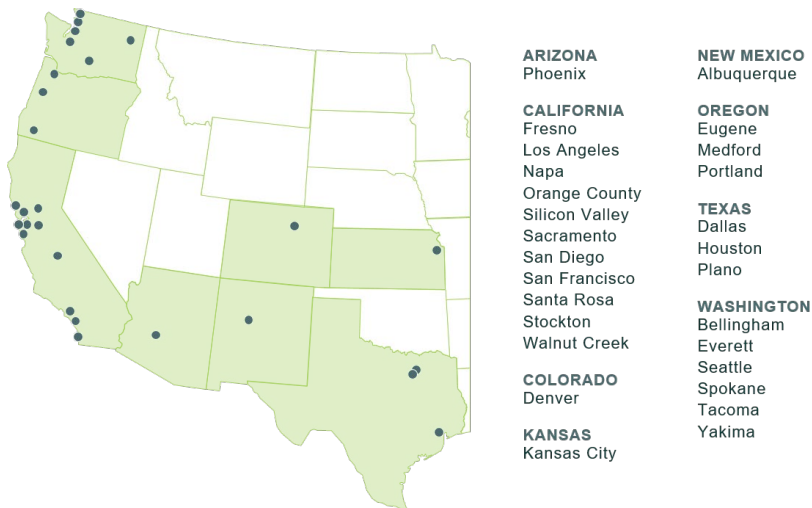
It begins in 1913, the year President Woodrow Wilson signed the federal income tax into law. That same year, John G. McIntosh, CPA, set up a small Seattle practice to serve a booming Pacific Northwest timber industry. Through good times and bad, through two world wars and 19 US presidents, that practice steadily extended its reach—first regionally, then nationally—to serve the businesses and industries that built this country.

Today, that practice is Moss Adams, one of the largest accounting, consulting, and wealth management firms in the nation, dedicated to assisting clients with growing, managing, and protecting prosperity. But our principles remain the same as they were when we opened our doors more than a century ago: Consistently hire talented people, work hard to make a difference in our communities, and empower our clients to discover and claim success.

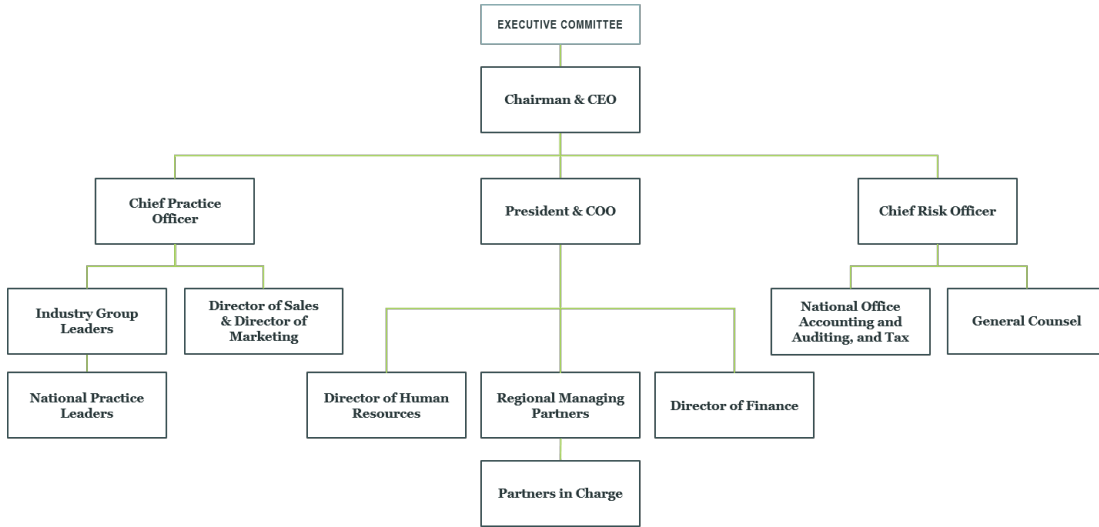
### OWNERSHIP STRUCTURE

Moss Adams is organized as a limited liability partnership with more than 340 active partners. Firm business is conducted under the leadership of our chief executive officer, Chris Schmidt; our chief operating officer, Dave Follett; an elected executive committee; regional managing partners; partners in charge of our offices; and many industry chairpersons. Several additional committees handle specific issues and needs of the firm’s business, such as accounting and auditing standards, tax practice, firm training, industry business development, and information services. Our national office, located in Seattle, Washington, provides certain centralized support services for the firm. Our practice offices have local leadership to help improve opportunities in their local business environment, but offices also work collaboratively to best serve our clients.

### OFFICE LOCATIONS



**ORGANIZATION CHART**



**NUMBER OF EMPLOYEES & ANNUAL REVENUES**

Moss Adams is a fully integrated professional services firm dedicated to growing, managing, and protecting prosperity. With over 3,400 professionals across more than 25 locations in the market capitals of the West and beyond, we work with the world’s most innovative, dynamic, and promising clients and markets. Through a full spectrum of accounting, consulting, and wealth management services, we bring the deep industry specialization and inspired thinking our mid-market clients seek.

Annual revenues in 2020 were \$820 million.

**SCOPE OF SERVICES OFFERED**

We offer a full range of services and specializations that span accounting, consulting, and wealth management to suit your specific needs.



## SPECIALTIES, STRENGTHS, AND LIMITATIONS



As OCERS selects an independent accounting firm to conduct your financial audit, you should consider a firm that has the experience, local resources, and qualifications to best assist you in meeting these challenges and being successful.

As one of the 15 largest accounting firms in the nation and the third largest pension and employee benefit plan audit services provider, we have the depth of resources necessary to serve OCERS with firmwide resources at our disposal. Very few firms truly specialize in the audits of retirement funds and other employee benefit plans, especially public retirement systems. We're proud to have this specialty and national experience with our partners and senior professionals.

Our national PERS specialty team serves as independent auditors to many public retirement systems and understands the unique accounting and operational risks and considerations for both defined benefit plans and pension systems sponsored by governmental entities, including the state of California laws and regulations specific to government-sponsored retirement systems. We'll provide our firm's top industry professionals to OCERS.

Moss Adams and our PERS professionals have worked closely with many clients to transition their financial audits from other accounting firms. We'll minimize disruption to you and your staff and make the transition period as smooth as possible. Rotation of audit firms assures you that a fresh set of eyes is overseeing your audit, and we're proposing a fresh team of experienced professionals to serve OCERS. With a new perspective, we can suggest innovative ways to make your organization more efficient and cost effective and to complete your audits in a timely manner and with minimal impact on your regular work routines. Our fresh viewpoint combined with our depth of experience is designed to result in a quality audit that properly assesses and responds to your unique risks and challenges.

## CLIENT RETENTION RATE

As a result of our firm's commitment to premier client service, we have a long history of excellent client retention. An important aspect of this service includes maintaining the confidentiality of our clients', and former clients', financial and business information. As a result, we avoid disclosure of client information except as necessary to provide our services. In addition, while client relationships may be terminated for a variety of reasons, including financial reasons, project discontinuation, and change in strategy, we don't maintain records regarding such terminations.

## Your Service Team

Working with the right team of professionals makes all the difference to your engagement. The team members we've thoughtfully selected to serve your specific needs have years of relevant experience. But more than that, you'll find they bring an optimistic perspective focused on helping you explore and embrace emerging opportunity. Your Moss Adams team will personally engage with your team and bring a new level of energy and enterprise to your engagement. Senior members of the audit team are duly licensed in their state of residence and will have practice privileges for California, as appropriate.

### **Kory Hoggan, CPA, Engagement Partner**



#### **Professional Experience**

Kory has over 25 years of accounting experience and specializes in the audits of PERS and other employee benefit plans. He's a member of the executive committee for the firm's Employee Benefit Plan Services group and the technical committee for the firm's Government Services Practice. Kory led teams that developed audit templates and client tools and training for the implementation of GASB Statements No. 67 and No. 68, related to pension accounting and reporting; GASB Statement No. 72, covering fair value measurements and reporting; and GASB Statement No. 84, on fiduciary activities.

Kory has extensive experience managing audits of complex investments including limited partnerships, real estate, derivatives, private equity, collective trusts and pooled investments accounts, international securities, and securities lending, as well as equity and fixed income securities. Kory served on the AICPA State & Local Government Expert Panel Task Force for Public Employee Retirement Systems, a group tasked with addressing implementation issues for GASB No. 67 and No. 68.

Kory is a frequent speaker at the AICPA National Conference for Employee Benefit Plans on the topic of governmental pensions and regularly presents to national and local audiences on recent GASB pronouncements, including implementation of the governmental pension, OPEB, and fiduciary activities standards.

Kory currently serves PERS, public pension systems, and investment councils with net positions of both over and under \$10 billion. He also serves many single-employer defined benefit and defined contribution retirement plans. Kory currently serves the following clients:

- American Samoa Government Employees' Retirement Fund
- Antelope Valley Memorial Hospital
- Los Angeles County Employees Retirement Association
- New Mexico Educational Retirement Board

**Kory Hoggan, CPA, Engagement Partner**

- California Independent System Operators
- City of Portland Fire and Police Disability and Retirement Fund
- County of Sacramento
- County of Ventura
- El Paso Firemen and Policemen’s Pension Fund
- Kansas Public Employees Retirement System
- Los Angeles City Employees’ Retirement System
- New Mexico Retiree Health Care Authority
- New Mexico State Investment Council
- Richmond (Virginia) Retirement System
- Salinas Valley Memorial Health Care System
- San Diego City Employees’ Retirement System (consulting)
- Warehousemen’s Pension Trust Fund (Port of Seattle)

**Professional Affiliations**

- Certified Public Accountant, California, License Number 143953
- Former member, AICPA State & Local Government Expert Panel Task Force for Public Employee Retirement Systems
- Member, Government Finance Officers Association
- Member, American Institute of Certified Public Accountants
- Chapter president, Association of Government Accountants

**Education**

- MAcc, Brigham Young University

**Laurie Tish, CPA, Concurring Partner & National Practice Leader, Government Services Practice**



**Professional Experience**

Laurie is our firm’s national practice leader for the Government Services Practice and focuses on serving public retirement systems and governmental entities. Her expertise includes GAAP pertinent to governmental entities, municipal and tax-exempt finance, regulatory and statutory accounting and reporting, and federal compliance audits. She also serves as the lead partner on annual examinations and reviews of corporate sustainability reports. Laurie is a nationally recognized speaker on topics including government accounting and auditing standards, federal compliance, and corporate governance in the public sector.

Laurie has provided auditing and consulting services to special enterprise funds, general governments, public employee retirement systems, and not-for-profit entities.



**Laurie Tish, CPA, Concurring Partner & National Practice Leader, Government Services Practice**

Laurie is past chair of the Washington State Board of Accountancy and currently serves on the Board of Directors of the National Association of State Boards of Accountancy.

**Professional Affiliations & Certifications**

- Certified Public Accountant, Washington, License Number 11491 (with practice privileges in California)
- Immediate past chair, Board of Directors, National Association of State Boards of Accountancy
- Past chair, Washington State Board of Accountancy
- Past chair, Governmental Accounting and Auditing Committee, Washington Society of Certified Public Accountants
- Member, American Institute of Certified Public Accountants
- Former member, Professional Ethics Executive Committee, AICPA
- Member, Washington Society of Certified Public Accountants

**Education**

- BA, business administration, Foster School of Business, University of Washington

**Aaron Hamilton, CPA, Senior Manager**



**Professional Experience**

Aaron has practiced public accounting since 2012. He provides audit, review, and consulting services for a variety of commercial and governmental clients. Aaron also provides consulting engagements to public retirement systems and governments across the country on pension accounting and reporting.

Aaron also leads engagements auditing private equity funds, private equity management companies, and a large private equity fund. He is one of the firm’s experts on GASB No. 68 and No. 75 allocation audits and has experience drafting the allocation reports and creating user guides to help participating employers with their accounting.

Aaron currently serves the following clients:

- El Paso Firemen and Policemen’s Pension Fund
- Los Angeles City Employees’ Retirement System
- New Mexico Commission for the Blind
- New Mexico Mortgage Finance Authority
- New Mexico Retiree Health Care Authority
- New Mexico State Investment Council

**Aaron Hamilton, CPA, Senior Manager**

- New Mexico Educational Retirement Board
- New Mexico State Land Office
- New Mexico Finance Authority
- Richmond Retirement System

**Professional Affiliations & Certifications**

- Certified Public Accountant, New Mexico, License Number 6759 (with practice privileges in California)
- Member, American Institute of Certified Public Accountants
- Member, New Mexico Society of Certified Public Accountants

**Education**

- MAcc, Brigham Young University

**Jason Lu, CPA, Senior Manager**



**Professional Experience**

Jason has specialized in the audits of employee benefit plans and retirement systems since 2012. His responsibilities include assessing risk and internal controls, identifying areas of noncompliance, and drafting and preparation of financial statements and disclosures. He’s also responsible for supervising and training new staff on engagements. In addition to financial audits, Jason also performs compliance audit services for plans and assists in regulatory consulting.

Jason currently serves the following clients:

- Antelope Valley Hospital Retirement Plan
- Los Angeles City Employees’ Retirement System
- Kansas Public Employees Retirement System
- Salinas Valley Hospital Retirement Plan

**Professional Affiliations & Certifications**

- Certified Public Accountant, Kansas, License Number 6220 (with practice privileges in California)
- Member, American Institute of Certified Public Accountants

**Education**

- MS, accounting, University of Kansas

**May Lee, Senior Auditor**



**Professional Experience**

May has practiced public accounting since 2016 and has experience with audits of pension plans in California.

**Education**

- MS, accountancy, University of Houston

**Amy Ha, Staff Auditor**



**Professional Experience**

Amy has practiced public accounting since 2020 and has experience with audits of pension plans in California.

**Education**

- BBA, accounting and business management, California State University – Los Angeles

**LOCAL RESOURCES**

**Matt Parsons, CPA, Partner**



**Professional Experience**

Matt has practiced public accounting since 2005. He specializes in serving governmental entities. In addition to audit services, Matt has performed many agreed-upon procedures for local government clients such as transient occupancy tax and franchise agreements reviews.

Matt's experience includes preparation of financial statements, internal control examinations, and conducting audits in accordance with *Government Auditing Standards* and single audits of federal awards. He currently sits on the technical review panel with the firm's national practice office and is responsible for reviewing financial statements issued by the firm to ensure they meet technical reporting requirements. He also reviews changes to the draft compliance supplement before it's issued to provide recommendations and request clarifications to ensure audit requirements for federal funds are clear and understandable.

**Matt Parsons, CPA, Partner**

Matt also provides training on accounting and auditing topics for Moss Adams professionals as well as clients and industry organizations. He has delivered a number of webinars on topics related GASB standards and the Uniform Guidance, and actively assists with publishing alerts and other relevant articles for clients related to emerging financial reporting and compliance issues.

**Professional Affiliations & Certifications**

- Certified Public Accountant, California, License Number 102134
- Member, American Institute of Certified Public Accountants
- Member, California Society of Certified Public Accountants
- Member, One OC Volunteer Advisory Council
- Member, Southern California Grantmakers
- Treasurer, Orange County Advisors in Philanthropy

**Education**

- BA, economics, University of California, Los Angeles

**Senior- and Staff-Level Service Team Members**

With careful consideration of your time and deadlines, we'll select and assign professionals to your engagement based on their PERS and governmental experience and ability to complete each assignment effectively. Because Moss Adams is an industry-focused firm, our staff and seniors begin developing their specializations early in their careers. There are a number of staff and seniors with PERS and governmental experience in our Orange County and Los Angeles offices. We'd be happy to make these individuals available for interviews at your request.

---

## Partner Rotation

Partner rotation is sometimes mandated by regulation, sometimes recommended as a best practice by influential organizations, and other times requested by a client's board of directors. For example, we work with our local agency clients in California to comply with Assembly Bill 1345 (California Government Code section 12410.6(b)) which requires rotation of the lead audit partner after six consecutive years. Rotation makes sure a fresh set of eyes is overseeing the audit and mitigates the risk of independence impairment. The drawback, however, is that tacit knowledge of the organization rotates off with the outgoing partner. Given this drawback, the rotation interval should be carefully considered. Should your organization require or request partner rotation for any reason, our policy is to structure a succession program that makes sure the replacement partner is in place with plenty of lead time for a seamless transition. You'll also have the opportunity to meet and speak with the incoming audit partner before being assigned. We want you to be confident in that person's ability to continue providing the leadership, expertise, and exceptional service that you expect.

## Quality and Continuity of Staff

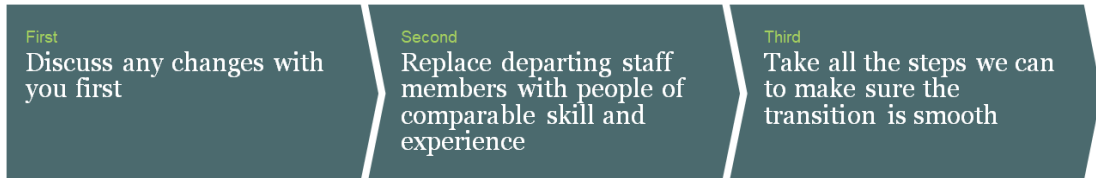
We take great pride in the experienced professionals we assign to engagements. Both our new and long-term clients regularly compliment our staff on their industry knowledge and practical approach. Due to our low turnover, we commit to returning staff on engagements whenever possible. OCERS will be served by some of our firm’s best client service partners and technical practitioners.

Keeping your service team consistent from year to year saves you the time required to train a new team during an engagement and allows you to focus on what you do best—managing your day-to-day business. It also helps us complete the engagement in a more efficient and timely manner because the team is already familiar with your operations.

Team continuity is the hallmark of a stable and efficient firm and, with an overall retention rate averaging over 80% firmwide over the past three years, we’re in a strong position to maintain your engagement team continuity.

| Group                        | 2020 Retention | 2019 Retention | 2018 Retention |
|------------------------------|----------------|----------------|----------------|
| Client Service Professionals | 79.0%          | 78.8%          | 80.0%          |
| Administrative Staff         | 84.1%          | 84.7%          | 84.6%          |

Our policy is to not rotate staff from an engagement team unless absolutely necessary. Typically, this would happen because a staff member left the firm or elected to change professional focus to a different industry group. As our retention statistics indicate, neither situation is very common. Still, if it were to become necessary to change members of your engagement team, we pledge to:



## Technical Resources and Industry Involvement

### Our Government Industry Involvement

Moss Adams stays on the leading edge of the government industry through our continued involvement in associations and with standard-setting entities. For these and other national and regional entities, our professionals attend annual meetings, trade shows, lectures, and industry-specific events as guests, speakers, and trainers. Here are a few of our affiliations; many of your team members have spoken at these events.

| Type                 | Our Industry Involvement   |
|----------------------|--|
| Speaking Engagements | <ul style="list-style-type: none"> <li>• AICPA Government and Not-for-Profit Training Program</li> <li>• AICPA Governmental Auditing and Accounting Conferences</li> <li>• Association of Government Accountants (local chapters) Events</li> <li>• California Society of CPAs Governmental Accounting and Auditing Conference</li> <li>• Falmouth Institute’s Indirect Cost Summit</li> <li>• Government Finance Officers Association (GFOA) Conferences</li> <li>• National Tribal Development Association Conference</li> <li>• Native American Finance Officers Association (NAFOA) Semiannual Conference</li> <li>• New Mexico Government Finance Executives Conference</li> <li>• Oregon Municipal Finance Officers Association Conference</li> <li>• Washington Public Utilities District Association</li> </ul>  |
| Professional Groups  | <ul style="list-style-type: none"> <li>• Several partners and senior managers are members of the Special Review Committee for the Government Finance Officers Association’s (GFOA) Certificate of Achievement for Excellence in Financial Reporting.</li> <li>• Laurie Tish (partner and national Government Services Practice leader) serves on the GASB Recognition &amp; Measurement Attributes Task Force, is currently a chair on the National Association of State Boards of Accountancy (NASBA) Board of Directors, and a cochair on the AICPA/NASBA CPA Evolution Joint Task Force.</li> <li>• Since 2006, Moss Adams professionals have been selected to be a members of the AICPA’s Government Audit Quality Center (GAQC) Executive Committee. Erica Forhan (partner) is the immediate past chair.</li> <li>• Kory Hoggan (partner) is a member of the State &amp; Local Government Expert Panel Task Force for Public Employee Retirement Systems and participated in the recent Governmental Accounting Standards Board (GASB) roundtables on evaluating GASB Nos. 67 and 68.</li> <li>• Tasha Repp (partner and national Tribal &amp; Gaming Practice leader) was the NAFOA representative on the GASAC 2013–2018 and is currently a member of the GASAC executive committee and GASB Tribal Working Group.</li> </ul> |

| Type | Our Industry Involvement  |
|------|---|
|      | <ul style="list-style-type: none"> <li>• Lisa Todd (partner and our national Employee Benefit Plan Services leader) serves on the AICPA Employee Benefit Plans Expert Panel and the AICPA Employee Benefit Plan Audit Quality Center's (EBPAQC) executive committee.</li> <li>• Bertha Minnihhan (partner and one of our national Employee Benefit Plan Services leaders) served on the AICPA Employee Benefit Plans Expert Panel and the AICPA EBPAQC executive committee, chaired the annual national AICPA Benefit Plan Conference for several years, and served on the AICPA Technical Standards Subcommittee, which assists with the DOL's review of ERISA audits and auditors.</li> <li>• Moss Adams is a world business partner of the Airports Council International-North America (ACI-NA). Olga Darlington (partner) represents our firm as an Accounting and Financing Working Group Member and Firm Representative of the ACI-NA's finance committee.</li> <li>• Tracy Paglia (partner) is the co-program director for the Tax Exempt / Government Entities Exempt Organizations Council.</li> <li>• Kinman Tong (partner) is a member of the CalCPA Governmental Accounting and Auditing Conference planning committee.</li> </ul> |



## References

Hear for yourself the unique experience our clients have in working with our firm. We're confident they'll share stories of how we make their lives easier, help them identify and take advantage of rising opportunities, and guide them to increased prosperity.

| Los Angeles City Employees' Retirement System |   |
|---|---|
| <b>Point of Contact:</b>                      | Rahoorf "Wally" Oyewole<br><i>Chief Department Accountant</i><br>(213) 978-6897<br><a href="mailto:rahoorf.oyewole@lacers.org">rahoorf.oyewole@lacers.org</a> |
| <b>Summary of Work:</b>                       | Annual financial statement audit and audit of employer allocations.   |
| <b>Length of Time Providing Services:</b>     | 2020–Present  |

| New Mexico Educational Retirement Board   |   |
|---|---|
| <b>Point of Contact:</b>                  | Jan Goodwin<br><i>Executive Director, New Hampshire Retirement System</i><br>(603) 410-3520<br><a href="mailto:jan.goodwin@nhrs.org">jan.goodwin@nhrs.org</a>                         |
| <b>Summary of Work:</b>                   | Audits of statewide PERS financial statements and employer allocation schedules for New Mexico Educational Retirement Board, where Ms. Goodwin was the Executive Director until 2021. |
| <b>Length of Time Providing Services:</b> | 2009–Present (New Mexico Educational Retirement Board)  |

| Ventura County                            |   |
|---|---|
| <b>Point of Contact:</b>                  | Patti Dowdy<br><i>Deferred Compensation Program Manager</i><br>(805) 662-6780<br><a href="mailto:patti.dowdy@ventura.org">patti.dowdy@ventura.org</a> |
| <b>Summary of Work:</b>                   | Audit of deferred compensation plans.   |
| <b>Length of Time Providing Services:</b> | 2018–Present  |

---

## Business License

With offices in Irvine, San Francisco, Silicon Valley, Los Angeles, Woodland Hills, San Diego, Sacramento, Stockton, Santa Rosa, Napa, Walnut Creek, and Fresno, Moss Adams LLP is duly licensed to practice public accountancy in the state of California. Below is a copy of our California Secretary of State License as well as our California Board of Accountancy license.

### BOARD OF ACCOUNTANCY

#### LICENSING DETAILS FOR: 4524

**NAME:** MOSS ADAMS LLP  
**LICENSE TYPE:** CPA - PARTNERSHIPS  
**LICENSE STATUS:** CLEAR  
**PREVIOUS NAMES:** MOSS ADAMS\_LLP ✦ MOSS ADAMS  
**ADDRESS**  
999 3RD AVE SUITE 2800  
SEATTLE WA 98104  
OUT OF STATE COUNTY

**ISSUANCE DATE**  
NOVEMBER 8, 1982  
**EXPIRATION DATE**  
NOVEMBER 30, 2022  
**CURRENT DATE / TIME**  
JANUARY 13, 2021  
12:07:45 PM

### PUBLIC DOCUMENTS

- › CBA PUBLIC ENFORCEMENT DOCUMENTS (1)
  - CBA WEBSITE:** [LINK](#)

---

## Standard Professional Services Contract

Our standard professional services contract is provided on the following pages.

September 3, 2021

Board of Retirement  
Orange County Employees Retirement System  
2223 East Wellington Avenue, Suite 100  
Santa Ana, CA 92701-3161

Re: Audit Services

Thank you for the opportunity to provide services to Orange County Employees Retirement System ("OCERS"). This engagement letter ("Engagement Letter") and the attached Professional Services Agreement, and Contract No. \_\_\_\_\_ between Moss Adams LLP and OCERS (the "Audit Contract"), which is incorporated by this reference, confirm our acceptance and understanding of the terms and objectives of our engagement, and limitations of the services that Moss Adams LLP ("Moss Adams," "we," "us," and "our") will provide to OCERS.

**Scope of Services – Audit**

You have requested that we audit OCERS' statement of fiduciary net position as of December 31, 2021, and the related statement of changes in fiduciary net position for the year then ending, and the related notes to the basic financial statements. We will also report on whether the schedule of contributions, schedule of administrative expenses, schedule of investment expenses, and schedule of payments for professional services presented as supplementary information are fairly stated, in all material respects, in relation to the financial statements as a whole.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information ("RSI"), such as management's discussion and analysis, schedule of changes in net pension liability of participating employers, schedule of employer contributions, schedule of investment returns, significant factors affecting trends in actuarial information – pension plan, and the related notes to the RSI to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the OCERS' RSI in accordance with auditing standards generally accepted in the United States of America. We will not express an opinion or provide assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide assurance.

We will also audit the schedules of employer allocations and pension amounts by employer as of December 31, 2021 and issue a separate report on the allocation audit.

### **Timing**

Kory Hoggan is responsible for supervising the engagements and authorizing the signing of the reports. We expect to begin the audit fieldwork for these engagements on a mutually agreed-upon date. As we reach the conclusion of each audit, we will coordinate with you the date the audited financial statements will be available for issuance.

Our scheduling depends on your completion of the year-end closing and adjusting process prior to our arrival to begin the fieldwork. We may experience delays in completing our services due to your staff's unavailability or delays in your closing and adjusting process. You understand our fees are subject to adjustment if we experience these delays in completing our services.

### **Fees**

Our fees will be as outlined in the Audit Contract.

Our ability to provide services in accordance with our estimated fees depends on the quality, timeliness, and accuracy of OCERS' records, and, for example, the number of general ledger adjustments required as a result of our work. To assist you in this process, we will provide you with a Client Audit Preparation Schedule that identifies the key work you will need to perform in preparation for the audit. We will also need your accounting staff to be readily available during the engagement to respond in a timely manner to our requests. Lack of preparation, poor records, general ledger adjustments, and/or untimely assistance will result in an increase of our fees.

### **Reporting**

We will issue a written report upon completion of our audit of OCERS' financial statements. Our report will be addressed to the Board of Retirement. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. Our services will be concluded upon delivery to you of our report on your financial statements and schedules of employer allocations and pension amounts by employer for the year ending December 31, 2021.

We appreciate the opportunity to be of service to you. If you agree with the terms of our engagement as set forth in the Agreement, please sign the enclosed copy of this letter and return it to us with the Professional Services Agreement.

Very truly yours,

Kory Hoggan, CPA  
Partner, for  
Moss Adams LLP

Enclosures

**Accepted and Agreed:**

This Engagement Letter and the attached Professional Services Agreement set forth the entire understanding of Orange County Employees Retirement System with respect to the engagements and the services to be provided by Moss Adams LLP:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **PROFESSIONAL SERVICES AGREEMENT**

### **Audit and Nonattest Services - Government Auditing Standards Version**

This Professional Services Agreement (the "PSA") together with the Engagement Letter, which is hereby incorporated by reference, represent the entire agreement (the "Agreement") relating to services that Moss Adams will provide to Orange County Employees Retirement System ("OCERS"). Any undefined terms in this PSA shall have the same meaning as set forth in the Engagement Letter.

#### **Objectives of the Audit**

The objective of our audit is the expression of an opinion on the financial statements and supplementary information. The objective also includes reporting on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*.

The report on internal control and compliance will include a statement that the purpose of the report is solely to describe the scope of testing of internal control over financial reporting and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the entity's internal control over financial reporting or on compliance, that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control over financial reporting and compliance, and, accordingly, it is not suitable for any other purpose.

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS) and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. It will include tests of your accounting records and other procedures we consider necessary to enable us to express an opinion on the financial statements and to render the required reports. If our opinion on the financial statements is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

#### **Procedures and Limitations**

Our procedures may include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of certain receivables and certain other assets, liabilities and transaction details by correspondence with selected customers, creditors, and financial institutions. We may also request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. The supplementary information will be subject to certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves. At the conclusion of our audit, we will require certain written representations from management about the financial statements and supplementary information and related matters. Management's failure to provide representations to our satisfaction will preclude us from issuing our report.

An audit includes examining evidence, on a test basis, supporting the amounts and disclosures in the financial statements. Therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Also, we will plan and perform the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free from material misstatement. Such material misstatements may include errors, fraudulent financial reporting, misappropriation of assets, or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that are attributable to the entity or to acts by management or employees acting on behalf of the entity that may have a direct financial statement impact. Pursuant to *Government Auditing Standards*, we will not provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements and noncompliance may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards*. An audit is not designed to detect immaterial misstatements or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors, fraudulent financial reporting, misappropriation of assets, and noncompliance with the provisions of laws, regulations, contracts and grant agreements that come to our attention, unless clearly inconsequential. We will also inform you of any other conditions or other matters involving internal control, if any, as required by *Government Auditing Standards*. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any time period for which we are not engaged as auditors.

Our audit will include obtaining an understanding of OCERS and its environment, including its internal control sufficient to assess the risks of material misstatements of the financial statements whether due to error or fraud and to design the nature, timing, and extent of further audit procedures to be performed. An audit is not designed to provide assurance on internal control or to identify deficiencies in the design or operation of internal control and accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*. However, if, during the audit,

we become aware of any matters involving internal control or its operation that we consider to be significant deficiencies under standards established by the American Institute of Certified Public Accountants, we will communicate them in writing to management and those charged with governance. We will also identify if we consider any significant deficiency, or combination of significant deficiencies, to be a material weakness.

We may assist management in the preparation of OCERS' financial statements and supplementary information. Regardless of any assistance we may render, all information included in the financial statements and supplementary information remains the representation of management. We may issue a preliminary draft of the financial statements and supplementary information to you for your review. Any preliminary draft financial statements and supplementary information should not be relied upon, reproduced or otherwise distributed without the written permission of Moss Adams.

### **Management's Responsibility**

As a condition of our engagement, management acknowledges and understands that management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America. We may advise management about appropriate accounting principles and their application and may assist in the preparation of your financial statements, but management remains responsible for the financial statements. Management also acknowledges and understands that management is responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud. This responsibility includes the maintenance of adequate records, the selection and application of accounting principles, and the safeguarding of assets. You are responsible for informing us about all known or suspected fraud affecting OCERS involving: (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting OCERS received in communications from employees, former employees, regulators or others.

Management is responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

Management is responsible for establishing and maintaining internal control over compliance with the provisions of laws, regulations, contracts, and grant agreements, and for identifying and ensuring that you comply with such provisions. Management is also responsible for addressing the audit findings and recommendations, establishing and maintaining a process to track the status of such findings and recommendations, and taking timely and appropriate steps to remedy any fraud and noncompliance with the provisions of laws, regulations, contracts, and grant agreements or abuse that we may report.

Management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Management agrees that as a condition of our engagement, management will provide us with:

- access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters;
- additional information that we may request from management for the purpose of the audit; and
- unrestricted access to persons within OCERS from whom we determine it necessary to obtain audit evidence.

### **Management's Responsibility for Supplementary Information**

Management is responsible for the preparation of the supplementary information in accordance with the applicable criteria. Management agrees to include the auditor's report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information. Management is responsible to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by the entity of the supplementary information and the auditor's report thereon. For purposes of this Agreement, audited financial statements are deemed to be readily available if a third-party user can obtain the audited financial statements without any further action by management. For example, financial statements on your Web site may be considered readily available but being available upon request is not considered readily available.



**Dissemination of Financial Statements**

Our report on the financial statements must be associated only with the financial statements that were the subject of our engagement. You may make copies of our report, but only if the entire financial statements (including related footnotes and supplementary information, as appropriate) are reproduced and distributed with our report. You agree not to reproduce or associate our report with any other financial statements, or portions thereof, that are not the subject of this engagement.

**Offering of Securities**

This Agreement does not contemplate Moss Adams providing any services in connection with the offering of securities, whether registered or exempt from registration, and Moss Adams will charge additional fees to provide any such services. You agree not to incorporate or reference our report in a private placement or other offering of your equity or debt securities without our express written permission. You further agree we are under no obligation to reissue our report or provide written permission for the use of our report at a later date in connection with an offering of securities, the issuance of debt instruments, or for any other circumstance. We will determine, at our sole discretion, whether we will reissue our report or provide written permission for the use of our report only after we have conducted any procedures, we deem necessary in the circumstances. You agree to provide us with adequate time to review documents where (a) our report is requested to be reissued, (b) our report is included in the offering document or referred to therein, or (c) reference to our firm is expected to be made. If we decide to reissue our report or provide written permission to the use of our report, you agree that Moss Adams will be included on each distribution of draft offering materials and we will receive a complete set of final documents. If we decide not to reissue our report or withhold our written permission to use our report, you may be required to engage another firm to audit periods covered by our audit reports, and that firm will likely bill you for its services. While the successor auditor may request access to our engagement documentation for those periods, we are under no obligation to permit such access.

**Changes in Professional or Accounting Standards**

To the extent that future federal, state, or professional rule-making activities require modification of our audit approach, procedures, scope of work, etc., we will advise you of such changes and the impact on our fee estimate. If we are unable to agree on the additional fees, if any, that may be required to implement any new accounting and auditing standards that are required to be adopted and applied as part of our engagement, we may terminate this Agreement as provided herein, regardless of the stage of completion.

**Representations of Management**

During the course of our engagement, we may request information and explanations from management regarding, among other matters, OCERS' operations, internal control, future plans, specific transactions, and accounting systems and procedures. At the conclusion of our engagement, we will require, as a precondition to the issuance of our report, that management provide us with a written representation letter confirming some or all of the representations made during the engagement. The procedures that we will perform in our engagement will be heavily influenced by the representations that we receive from management. Accordingly, false representations could cause us to expend unnecessary efforts or could cause a material error or fraud to go undetected by our procedures. In view of the foregoing, you agree that we will not be responsible for any misstatements in OCERS' financial statements and supplementary information that we fail to detect as a result of false or misleading representations, whether oral or written, that are made to us by OCERS' management. While we may assist management in the preparation of the representation letter, it is management's responsibility to carefully review and understand the representations made therein.

In addition, because our failure to detect material misstatements could cause others relying upon our audit report to incur damages, OCERS further agrees to indemnify and hold us harmless from any liability and all costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material misstatements in OCERS' financial statements and supplementary information resulting in whole or in part from knowingly false or misleading representations made to us by any member of OCERS' management.

**Fees and Expenses**

OCERS acknowledges that the following circumstances will result in an increase of our fees:

- Failure to prepare for the audit as evidenced by accounts and records that have not been subject to normal year-end closing and reconciliation procedures;
- Failure to complete the audit preparation work by the applicable due dates;
- Significant unanticipated transactions, audit issues, or other such circumstances;
- Delays causing scheduling changes or disruption of fieldwork;

- After audit or post fieldwork circumstances requiring revisions to work previously completed or delays in resolution of issues that extend the period of time necessary to complete the audit;
- Issues with the prior audit firm, prior year account balances or report disclosures that impact the current year engagement; and
- An excessive number of audit adjustments.

We will endeavor to advise you in the event these circumstances occur, however we may be unable to determine the impact on the estimated fee until the conclusion of the engagement. We will bill any additional amounts based on the experience of the individuals involved and the amount of work performed.

Billings are due upon presentation and become delinquent if not paid within 30 days of the invoice date. Any past due fee under this Agreement shall bear interest at the highest rate allowed by law on any unpaid balance. In addition to fees, you may be billed for expenses and any applicable sales and gross receipts tax. Direct expenses may be charged based on out-of-pocket expenditures, per diem allotments, and mileage reimbursements, depending on the nature of the expense. Indirect expenses, such as processing time and technology expenses, may be passed through at our estimated cost and may be billed as a flat charge or a percentage of fees. If we elect to suspend our engagement for nonpayment, we may not resume our work until the account is paid in full. If we elect to terminate our services for nonpayment, or as otherwise provided in this Agreement, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our work. You will be obligated to compensate us for fees earned for services rendered and to reimburse us for expenses. You acknowledge and agree that in the event we stop work or terminate this Agreement as a result of your failure to pay on a timely basis for services rendered by Moss Adams as provided in this Agreement, or if we terminate this Agreement for any other reason, we shall not be liable to you for any damages that occur as a result of our ceasing to render services.

#### **Limitation on Liability**

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

#### **Subpoena or Other Release of Documents**

As a result of our services to you, we may be required or requested to provide information or documents to you or a third-party in connection with governmental regulations or activities, or a legal, arbitration or administrative proceeding (including a grand jury investigation), in which we are not a party. You may, within the time permitted for our firm to respond to any request, initiate such legal action as you deem appropriate to protect information from discovery. If you take no action within the time permitted for us to respond or if your action does not result in a judicial order protecting us from supplying requested information, we will construe your inaction or failure as consent to comply with the request. Our efforts in complying with such requests or demands will be deemed a part of this engagement and we shall be entitled to additional compensation for our time and reimbursement for our out-of-pocket expenditures (including legal fees) in complying with such request or demand.

Pursuant to authority given by law or regulation, we may be requested to make certain engagement documentation available to an applicable entity with oversight responsibilities for the audit or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such engagement documentation will be provided under the supervision of Moss Adams personnel. Furthermore, upon request, we may provide photocopies of selected engagement documentation to the aforementioned parties. These parties may intend, or decide, to distribute the photocopies or information contained therein to others, including other governmental agencies.

#### **Document Retention Policy**

At the conclusion of this engagement, we will return to you all original records you supplied to us. Your records are the primary records for your operations and comprise the backup and support for the results of this engagement. Our records and files, including our engagement documentation whether kept on paper or electronic media, are our property and are not a substitute for your own records. Our firm policy calls for us to destroy our engagement files and all pertinent engagement documentation after a retention period of seven years (or longer, if required by law or regulation), after which time these items will no longer be available. We are under no obligation to notify you regarding the destruction of our records. We reserve the right to modify the retention period without notifying you. Catastrophic events or physical deterioration may result in our firm's records being unavailable before the expiration of the above retention period.

Except as set forth above, you agree that Moss Adams may destroy paper originals and copies of any documents, including, without limitation, correspondence, agreements, and representation letters, and retain only digital images thereof.

### **Use of Electronic Communication**

In the interest of facilitating our services to you, we may communicate by facsimile transmission or send electronic mail over the Internet. Such communications may include information that is confidential. We employ measures in the use of electronic communications designed to provide reasonable assurance that data security is maintained. While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept we have no control over the unauthorized interception of these communications once they have been sent. Unless you issue specific instructions to do otherwise, we will assume you consent to our use of electronic communications to your representatives and other use of these electronic devices during the term of this Agreement as we deem appropriate.

### **Use of Third-Party Service Providers**

We may use third-party service providers in serving you. In such circumstances, if we need to share confidential information with these service providers, we will require that they maintain the confidentiality of your information.

### **Enforceability**

In the event that any portion of this Agreement is deemed invalid or unenforceable, said finding shall not operate to invalidate the remainder of this Agreement.

### **Entire Agreement**

This Professional Services Agreement and Engagement Letter constitute the entire agreement and understanding between Moss Adams and OCERS. OCERS agrees that in entering into this Agreement it is not relying and has not relied upon any oral or other representations, promise or statement made by anyone which is not set forth herein.

In the event the parties fail to enter into a new Agreement for each subsequent calendar year in which Moss Adams provides services to OCERS, the terms and conditions of this PSA shall continue in force until such time as the parties execute a new written Agreement or terminate their relationship, whichever occurs first.

### **Use of Moss Adams' Name**

OCERS may not use any of Moss Adams' name, trademarks, service marks or logo in connection with the services contemplated by this Agreement or otherwise without the prior written permission of Moss Adams, which permission may be withheld for any or no reason and may be subject to certain conditions.

### **Use of Nonlicensed Personnel**

Certain engagement personnel who are not licensed as certified public accountants may provide services during this engagement.

### **Dispute Resolution Procedure, Venue and Limitation Period**

This Agreement shall be governed by the laws of the state of Washington, without giving effect to any conflicts of laws principles. If a dispute arises out of or relates to the engagement described herein, and if the dispute cannot be settled through negotiations, the parties agree first to try in good faith to settle the dispute by mediation using an agreed upon mediator. If the parties are unable to agree on a mediator, the parties shall petition the state court that would have jurisdiction over this matter if litigation were to ensue and request the appointment of a mediator, and such appointment shall be binding on the parties. Each party shall be responsible for its own mediation expenses and shall share equally in the mediator's fees and expenses.

If the claim or dispute cannot be settled through mediation, each party hereby irrevocably (a) consents to the exclusive jurisdiction and venue of the appropriate state or federal court located in King County, state of Washington, in connection with any dispute hereunder or the enforcement of any right or obligation hereunder, and (b) WAIVES ITS RIGHT TO A JURY TRIAL. EACH PARTY FURTHER AGREES THAT ANY SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES.

### **Termination**

This Agreement may be terminated by either party, with or without cause, upon ten (10) days' written notice. In such event, we will stop providing services hereunder except on work, mutually agreed upon in writing, necessary to carry out such termination. In the event of termination: (a) you shall pay us for services provided and expenses incurred through the effective date of termination, (b) we will provide you with all finished reports that we have prepared pursuant to this Agreement, (c) neither party shall be liable to the other for any damages that occur as a result of our ceasing to render services, and (d) we will require any new accounting firm that you may retain to execute access letters satisfactory to Moss Adams prior to reviewing our files.

**Hiring of Employees**

Any offer of employment to members of the audit team prior to issuance of our report may impair our independence, and as a result, may result in our inability to complete the engagement and issue a report.

**Mutual Waiver of COVID-19 Claims**

This provision addresses issues regarding the novel coronavirus ("COVID-19"). The Parties acknowledge their respective understanding of the hazards of COVID-19, including, but not limited to, its highly contagious nature and the corresponding health risks associated with being exposed to or infected by COVID-19. Each Party agrees to waive, release, discharge, and covenants not to sue the other Party or its affiliates and its and their respective officers, directors, partners, principals, employees, agents, or subcontractors from any and all claims, damages, expense, liability, illness or losses that may occur from exposure to or infection by COVID-19 arising out of, related to, or in any way connected with the professional services provided by Moss Adams.

DRAFT

## Fees

For our clients, it's about more than the dollars you pay at the end of the day; it's about value. Consider both the tangible and intangible benefits of working with us. You'll get solid and timely deliverables. But more than that, the experience you'll have working with forward-thinking, industry-specialized professionals who work side by side with you to explore new possibilities is where you'll see the value. Invest in your future prosperity and experience a different style of service with us. Our estimated fees are based on budgeted hours for the audits of similar public pension funds based on the standard hourly rates of the individuals proposed for your engagements.

| Service Description   | 2021              | 2022              | 2023              |
|---|-------------------|-------------------|-------------------|
| Audit of financial statements for the year ending December 31           | \$ 99,500         | \$ 100,500        | \$ 101,500        |
| Audit of employer allocations (GASB 68) for the year ending December 31 | \$ 16,300         | \$ 16,800         | \$ 17,000         |
| <b>Total</b>  | <b>\$ 115,800</b> | <b>\$ 117,300</b> | <b>\$ 118,500</b> |

### Fee Details

| Subject                                   | The Details  |
|---|--|
| Client Acceptance Procedures              | The scope of work and fee quotes are subject to our client acceptance process, which: 1) verifies that all parties understand the specific services we're being asked to perform; 2) ensures contract terms are acceptable to both parties and in agreement with professional standards; and 3) confirms we've staffed the engagement with individuals qualified with the necessary experience to fulfill our commitments to our prospective client. We'll also need to complete our inquiries of your former auditor as required by our professional audit standards. |
| First-Year Costs                          | We acknowledge that changing auditors can be disruptive to your staff's routines, since a new audit team needs to spend time learning your systems. We'll absorb all costs related to the transition.  |
| Progress Billing                          | Progress billings are based on hours and expenses completed at the time of billing. Bills are due upon receipt.  |
| Cost Overruns                             | During the course of the audit, we'll measure our progress against our planned budget. If situations arise that are significantly different than our expectations, we'll bring them to your attention immediately and discuss various options before we proceed. We'll meet weekly during the course of fieldwork with the appropriate parties to ensure there are open lines of communication between our organizations.  |
| Future New Audit and Accounting Standards | Our fee estimate discussed herein is based on accounting and professional standards that exist and are applicable as of the date of this proposal. To the extent that future rulemaking activities require modification to our audit approach, procedures, scope of work, etc., we'll advise you of such changes and the impact on our fee proposal.   |

| Subject                        | The Details   |
|--------------------------------|---|
| Routine Phone Calls and Emails | Our policy is to not charge for short telephone calls seeking miscellaneous advice unless those consultations require significant additional work or research. If a matter requires further follow-up, we'll discuss a fee estimate with you before incurring significant time.   |
| Predecessor Auditors           | Our fee estimates are based on the assumption that the predecessor auditors will provide timely access to their audit working papers for the year ended December 31, 2020. Further, it's assumed that the audit work performed by the predecessor auditor will be adequate to support beginning balances.   |
| Audit Preparation              | Our proposed fees are based on the presumption that your books and records will be ready for audit and minimal audit adjustments will be required. If accounting assistance is required to reconcile accounts, we'll discuss the issues with you, and additional fees will be billed separately, at our standard rates. Additionally, our fee quote assumes that we won't identify any audit findings, including significant deficiencies or material weaknesses. If potential audit findings are identified, costs for investigating and reporting them will be in addition to our audit fees. |

# Work Plan and Audit Approach

## TRANSITIONING TO MOSS ADAMS

It's our first step in welcoming you as a new client—and it's an important one. Our goal? To avoid disruption to your staff and make the transition period as smooth as possible. You'll get:

|  |   |  |
|--|---|--|
| <p><b>no surprises.</b></p>  <ul style="list-style-type: none"> <li>- Close leadership of engagement teams</li> <li>- Face-to-face meetings with your team</li> <li>- Focus on building a relationship</li> </ul> | <p><b>personal service.</b></p>  <ul style="list-style-type: none"> <li>- A transition plan tailored to your needs</li> <li>- Responsive, proactive service</li> <li>- Ability to hit the ground running with your existing report methods and workpapers</li> </ul> | <p><b>flexibility.</b></p>  <ul style="list-style-type: none"> <li>- We meet with you well before the transition</li> <li>- We look over your financial statements ahead of time</li> <li>- We create a communication plan so you stay informed</li> <li>- We outline clear expectations and timing for both of us</li> </ul> |
|--|---|--|

## Transition Steps

1. **Entrance meetings.** Conference with your management and staff and other appropriate groups, including your actuaries (Segal & Co.) and investment custodian (State Street), to discuss risks, expectations, processes, and timelines. We currently audit various public pension systems that work with Segal & Co., State Street, and Meketa Investment Group, and have strong working relationships with each of these service providers.
2. **Planning sessions.** Meet with key managers to discuss risks, expectations, the audit process and timelines, and to share key strategic, financial, and operational information. Timelines will be developed for each of the key phases including the financial statements, actuarial valuations, and allocation schedules under GASB No. 68.
3. **Review working papers.** Examine your prior auditor's working papers to understand their audit approach and the timing of their procedures, and to determine the scope of any additional procedures our team will perform on the opening balances in your financial statements.
4. **Develop the communication plan.** Our preferred communication plan entails a weekly status meeting during fieldwork periods, and regular video conference calls when not in the field, with key members of your team to discuss findings so far, open items, a review of work completed and yet to be performed, and related information needs for the upcoming weeks. These meetings are used to gauge progress toward agreed-upon milestones and timelines. We find we can be flexible in our staffing and timing of our audit procedures to address challenges when they're identified early and discussed in these debrief meetings.

Kory Hoggan will have the ultimate responsibility for these meetings and communications based on reports from senior staff assigned to each segment, as discussed below and in our audit approach.

5. **Design audit approach.** Devise an efficient and effective approach that addresses the potential risks we discover during the transition—and assign senior level staff to key segments of the work to ensure proper and timely supervision of our team and their work. We find that by dividing the work into segments and assigning different individuals to those segments, we can ensure the timely delivery of our services and effective communication of the status to your management team.

### **How We'll Communicate with Your Governance and Management Teams**

We'll lead extensive communication prior to beginning the actual fieldwork to gain a clear understanding of expected audit issues, our testing approach, and the documentation needed. We're very conscious of not duplicating our efforts and will attempt to use existing documentation whenever possible. We don't demand that our clients conform to pro forma documentation.

As we begin the audit, we like to conduct an entrance conference with your audit committee, finance staff, and/or other members of the governance team. We'll schedule conference calls with your key investment officers and managers to understand the composition of your alternative investment portfolio and develop a risk-based approach to auditing investments, rather than immediately sending conformation requests to all of your fund managers. We'll coordinate with your independent actuaries, as well as members of your management team who oversee the actuarial valuation and measurements, to coordinate providing reviewed financial statement drafts and understanding of actuarial assumptions used. In the entrance meeting, we'll discuss our audit approach, timing, and provide an opportunity for management and other OCERS representatives to convey any issues, risks, or areas of special focus.

At the end of our fieldwork, we'll hold an exit conference with management as well as the individuals you designate, including members of your audit committee or Board of Retirement. We'll share all findings, the status of the audit, projected timeliness for completion, and, our comments on your drafted financial statements. OCERS and management will have the opportunity to investigate and respond to any findings prior to formal communications. The goal of our preferred communication style is to allow OCERS representatives to share in the formation of our risk assessments and areas we'll perform testing, reduce surprises from any potential findings we have along the way, and present audit results in draft form before we provide final written reports. This preferred style allows us to meet our objective to help prevent unwanted surprises, as well as to meet OCERS' desire to hear from its auditor on operational issues, discuss our observations, and communicate important issues during the audit.

### **AUDIT METHODOLOGY**

We know it's not just about what we do; it's how we do it. For us, an audit isn't just a compliance exercise. We believe it's an opportunity to view OCERS at a macro level, go well beyond the numbers, and provide greater value than simply complying with a requirement.

And, because we have a deep respect for your time and don't believe in the one-size-fits-all approach, we can offer you an audit approach that's customized specifically to your organization. After all, why spend time on procedures that aren't necessary? Customizing our process results in an efficient audit that's complete in fewer hours.

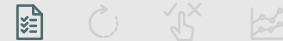


What's different about our approach? Rather than a checklist approach, which scales an audit from the needs of the largest organizations, we tailor our audits from the bottom up, focusing on the important areas of risk, relevant to OCERS operations and financial reporting.

## PROPOSED SEGMENTATION OF THE ENGAGEMENT

The following is a summary of our specific audit approach including the level of staff and estimated number of hours to be assigned to each proposed segment of the engagement:

### *Planning*



Throughout the planning phase of the audit, we'll:

- Perform planning inquiries and discussions with OCERS management to establish a mutually agreed-upon timeline for the audit and any changes with OCERS processes, provisions, or personnel during the year.
- Conduct planning sessions with OCERS management and staff to outline and share mutual expectations. By maintaining ongoing communication throughout the year, there are typically no surprises in these planning discussions.
- Design an audit approach with effective risk coverage and efficient procedures.
- Prepare a list of audit schedules to be prepared by OCERS, with consideration of the format and information that was provided to the prior audit firm.
- Coordinate with OCERS internal audit division to consider examinations performed by internal audit during the year in our risk assessment.
- Gain an understanding of OCERS' IT environment and related information technology general controls significant to key systems and applications and perform tests of the operating effectiveness of internal controls. The way you use IT to process accounting information can have a significant impact on our assessment of, and reliance on, your internal controls. Your audit team, with specialists from our IT consulting practice, will evaluate the technology environment and assess its impact on audit procedures and our reliance on internal controls.

During the planning phase—which we primarily perform remotely—we conduct preliminary analytical reviews, which consist of a comparison of current- and prior-year results, as well as actual and budgetary information. We also consider preliminary plan results, in light of information obtained, by reviewing OCERS' Board minutes and communications with management. Also, in conformity with audit standards, our team will hold internal “brainstorming” meetings and meeting with OCERS management and staff to discuss fraud risks related to OCERS.

### **Evaluating Risk**

For each balance presented in your financial statements and the measurements in your allocation schedules, we'll evaluate the relative levels of inherent risk and control risk, as well as assess the risk of material misstatement resulting from fraud. Our customized audit design will reflect this assessment.

## Determining an Audit Approach

After evaluating levels of materiality and performing an initial risk assessment, we'll tailor our audit programs for the fieldwork to obtain evidence from a combination of tests of controls, analytical procedures, or substantive tests of details of transactions and ending balances.

**Tests of controls.** We'll gain an understanding of OCERS' internal control environment and control activities specific to each of the significant transaction cycles and perform tests of the operating effectiveness of internal controls. Sample sizes vary depending upon the reliability and nature of the controls selected for testing and the frequency that the control activity occurs.

**Analytical procedures.** Analytical procedures will be used to understand and test financial statement relationships or balances for certain accounts. We'll evaluate financial information through analysis of plausible relationships using both financial and nonfinancial data and development of explicit and independent expectations of financial statement relationships or balances that should exist under the particular circumstances.

### *Financial Statement Fieldwork*



Given the number and breadth of experienced staff located in our Orange County and Southern California offices, we can accommodate just about any desired timing of interim and final fieldwork that meets the desired timing and needs of OCERS. Our preference is to perform interim fieldwork in January, after performing our planning procedures remotely in December, and to perform final fieldwork in late April and early May. We'd begin with an entrance conference with management to revisit the agreed-upon timeline for the audit, discuss specific risk areas identified during planning, and perform the required planning communications with those charged with governance.

## Audit Approach for Significant Account Balances and Transactions

Our firm's audit approach to the specific financial statement line items may include, but not be limited, to the following procedures:

**Investments and investment earnings.** Our approach to auditing investments will be to first gain an understanding of the design and implementation of internal controls over investments. We'll take the key controls identified and review what assertions they cover, what types of investments they address, and whether it's advantageous to test operating effectiveness of the controls. For certain investment types, our approach will be to just assess the design and implementation of the control activities. Based on the results of our control testing, we'll perform substantive audit procedures for investments as follows:

- Send independent confirmations of investment values to custodians and selected investment managers (based on preliminary discussions with your investment managers, our risk assessment, and significance of investment balances)
- Review management's monitoring activities with regard investment options and individual investment funds by reviewing board or committee minutes and monitoring logs maintained for alternative investment fund managers
- Review investment statements provided by custodians and agree reported balances to the Plan's financial statements
- Perform testing of investment earnings and transactions during the year

In addition, we have designated professionals with experience auditing investments, particularly alternative investments. We're aware of the challenges you face in valuing alternatives, and we're aware of the challenges we face as auditors of an entity with alternative investments.

We've developed an effective approach to auditing investments based on the guidance of the AICPA Technical Practice Aid for Alternative Investments and our firm's experience auditing investment funds and limited partnerships.

**Alternative investments.** We'll focus our audit approach on several areas of risk associated with investments in alternative investment vehicles, including the existence of your investment in the alternative investment vehicle, the existence and valuation of the investment portfolio held by that investment vehicle, and the valuation of the alternative investment vehicle within your financial statements. During the planning phase, we meet with the appropriate investment personnel at OCERS to identify and review the organization's investment portfolio. By reviewing the investment portfolio in advance, we can identify which investments are alternative investments. During this time, we also document internal controls over investments and perform a risk assessment for both alternative investments and marketable investments. Based on this documentation, we determine which internal controls to test and the substantive procedures to be performed at final fieldwork.

Following our meetings with investment personnel at OCERS, we'll discuss the preparation of investment confirmations and consideration of timing lags in the availability of fair value measurements from certain fund managers. We'll coordinate the preparation of confirmations with management and sent electronic confirmations following year-end. During interim fieldwork, we test internal controls over investments, including key controls over the investment policy, authorization of investments, consideration of conflicts of interest, and monitoring of alternative investments. These are typically among the highest risk areas with most PERS. We also discuss with management the prepared by client schedules and documents needed to perform substantive testing during final fieldwork. We'll be proactive in determining the work to be performed by OCERS to document that the valuation determination will be sufficient for our audit.

Adequate support for the determination of the fair value of alternative investments can include the following:

- Sufficient understanding of the nature of the underlying investments
- Portfolio strategy of the alternative investments
- Methods and significant assumptions used by the fund manager to value the underlying investments

In the absence of a detailed list of the underlying investments for an alternative investment as of your fiscal year-end, management may be able to provide adequate support for the valuation of alternative investments through the following:

- Documentation of periodic interview with fund management
- Reconciliation to audited financial statements
- Retrospective review of the investment's annual audited financial statements
- Review of the investment's transactions at or near the date of the statement of fiduciary net position
- Review of SOC 1 report

During final fieldwork, we'll test management's documentation of the valuation of investments and test existence of investments. To test existence of marketable investments, we check the investment balance and use Moss Adams Advisory Services (MAAS) and subscriptions to an independent valuation service (Bloomberg) to verify the per-share price with a third-party source for a sample of investments. The tests for alternative investments vary from investment to investment based on the information available and nature of the investment. By planning early, we can efficiently audit the investments during final fieldwork. It's extremely important to note that management is responsible for obtaining and supplying all the information described above.

We'll send investment confirmations to selected fund managers electronically in early January. We'll establish regular communication with OCERS' accounting and investment staff through a secure portal to communicate receipt of investment confirmations and updated valuations received from your fund managers. During late February, we'll meet with OCERS' investment management to consider fair value variances due to lag reporting in received alternative investment confirmations, as well as the results of other performed audit procedures. Management may then make an estimated adjustment to remaining unconfirmed investments based on known trends and market conditions, with consideration of any cash purchases or sales of the investment during the period since the last known reporting date. This will allow management to adjust the final estimated fair value of investments and facilitate the closing of OCERS' accounts at the end of February or a date prior to receipt of all confirmations. This estimated value can be confirmed to be within accepted materiality range for the audited statements and facilitate completion of the actuarial measurement and initial drafting of the financial statements. Immaterial variances from the estimated fair value measurements that later become known can be adjusted in the following year. This method permits earlier closing of your books and is an acceptable practice among our other PERS clients.

**Contributions.** We'll perform audit procedures to test that amounts received or due to OCERS from the County and members have been appropriately calculated, recorded, and disclosed in the proper period. Tests of controls for contributions include selecting a representative sample of members and County contributions received and performing recalculations of contributions based on OCERS required contribution rates. Substantive audit procedures for contributions include obtaining subsidiary ledgers for contributions and reconciling to the general ledger, performing substantive analytic procedures and measuring contribution amounts to independent expectations, and confirming County contributions.

**Actuarial valuation and assumptions.** Our consideration of the actuarial valuations and measurement of the collective total pension liability and total OPEB liability begins with evaluating the professional qualifications of the actuary, including their competence, capabilities, and objectivity as required by generally accepted auditing standards. We've worked extensively with Segal & Co. on numerous mutual governmental, corporate, and pension clients and are familiar with their professional reputation and experience. We obtain the actuarial valuation reports used to measure the total pension liability, as well as the assumptions used, and measurements made of OCERS pension amounts to be allocated to employers. We evaluate the assumptions used by the actuary, including cost method, mortality tables used, valuation date and measurement period, long-term rate of return on investments, discount rate, and other key assumptions to the requirements of GASB Nos. 67 and 68.

**Benefit payments.** Our approach to auditing benefit payments begins with assessing reliance on internal controls, based on the results of our tests of controls, to help ensure that benefit payments have been calculated and paid in accordance with PERS provisions and member authorizations and elections. We perform substantive analytical procedures and compare benefit payments for significant benefit and withdrawal accounts to expectations based on historical trends and current-year activity. During final fieldwork, auditing procedures include using directed and statistical sampling of new annuitants from the schedule of benefit payments and determining eligibility, recalculating benefit payments, evaluating whether calculations and payments were authorized, and agreeing the member data for proper classification in the retired category by the actuary. In addition, we perform directed sampling of other withdrawals including death benefits, QDROs, lump sum distributions, and other qualified payments to members and perform testing to authorizing documents and qualified amounts. We'll include a member of our Orange County health care consulting group to assist with testing of claims and premiums paid in the health care plan.

**Exit conference.** At the conclusion of financial statement audit fieldwork, we'll attend an exit conference with OCERS management to review the final audit report, management letter, and any compliance reports. We'll share findings and recommendations from each report with the Board of Retirement, as requested.

### **Employer Allocation Audit**

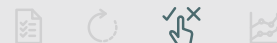
**Actuarial measurement and allocations.** Our testing of the schedules of employer allocations and pension amounts by employer begins with obtaining the actuarial measurement reports and the allocation schedules drafted by Segal & Co. and OCERS. We'll coordinate initial audit procedures, including testing of census data, with our financial statement fieldwork to maintain efficiency in our audit approach and avoid duplication. Our consideration of internal controls includes evaluating procedures for receiving contributions and employer data used in the employer allocations and for the actuary's valuation of future contributions used as the allocation method. We evaluate the assumptions used by the actuary for allocating the net pension liability and other pension amounts (GASB No. 68).

**Census data.** We'll coordinate and leverage OCERS internal testing of the accuracy of participant census data with a re-performance of a sample of individual census data, plan eligibility, and eligible compensation determinations. We'll coordinate testing efforts with procedures performed internally and establish a mutually agreed-upon timeline for census data testing, sample sizes, and sample selection based on the multiple-employer sampling methodology recommended in the AICPA Audit and Accounting Guide for State and Local Governments Chapter 13.

Our testing of census data will cover the ability of the County to provide accurate information to OCERS that forms the basis for participant future contributions. These procedures will include identifying applicable payroll registers and payroll cycles, obtaining a population of payroll transmissions remitted to OCERS during the measurement period, and accessing database information of current employees that can be sorted by hire dates to stratify the population and emphasize testing of newly eligible employees and status changes reported during the measurement period.

**Exit conference.** At the conclusion of employer allocation audit fieldwork for the pension employer allocation schedules, we'll attend an exit conference with OCERS management to review the final audit reports on the allocation schedules and the related management letter.

### ***Finalizing the Audits***

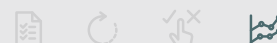


Our procedures will include testing of subsequent events, updates to investment testing for confirmation received with 90-day timing lags on year-end valuations (with consideration of estimates made by management), related party transactions, and disclosures related to risks and uncertainties. We'll review minutes of meetings of the Board of Retirement, and we'll consider procedures in place to identify illegal acts.

Throughout the course of the audit, we'll keep in close communication with the Plan's management through weekly status meetings to discuss engagement status, open items, and any preliminary findings as they arise to allow ample time for management to research and respond. Upon completion of our audit, we'll prepare our reports and management letter, and discuss them with management prior to their issuance. Drafts of any recommendations or control deficiencies, if any, will be provided to management in real time during the audit process to allow time to research and respond prior to presentation of the final drafts. Meeting OCERS' specific reporting deadlines is extremely important and a priority in our audit timeline and approach.

**Audit findings.** We'll use a tiered approach that assesses the significance of the observed error, lack of effective control mechanism, or instance of noncompliance. We'll use an assessment that includes the materiality of the issue to each major program and a risk analysis of the pervasiveness of the issue. We'll identify and report in writing only those major items that put the plan at risk or constitute significant noncompliance.

### ***Post-fieldwork and Reporting***



We don't like surprises, and neither do you. That's why we hold an exit meeting with management at the end of interim and final fieldwork to discuss any findings, open items, or other issues. This allows management to check that our findings are accurate and keeps you informed of any potential issues with adequate time to research and respond. After we've determined the points are valid, we'll provide draft reports to review prior to final issuance. We also invite members of the Board of Retirement and your audit committee to sit in during our exits with management to keep apprised of possible issues.






We'll present the financial statements and the communication letters, at your direction, to the Board of Retirement at the conclusion of our audit. Our goal in presenting the audit to you is to communicate information we gain in the audit process that may not be evident by simply reading the financial statements. We consider operational issues, discuss our observations, and communicate important issues during the presentation.

### **Report Delivery**

Our firm policy is to deliver the audit reports and finalize our working papers as soon as possible after the completion of fieldwork. We commit to meeting all applicable deadlines for your audit, assuming we're provided all necessary information and data (i.e., client-prepared schedules and completed financial statements) in a complete and timely manner, and as long as no unexpected events beyond our control occur (i.e., material weaknesses in internal control or illegal acts noted during the audit).

## LEVEL OF STAFF AND NUMBER OF HOURS TO BE ASSIGNED

Below is a breakdown of the number of hours to be assigned by level of staff.

| Phase   | Partners  | Senior Managers | Seniors & Staff | Total      |
|---|-----------|-----------------|-----------------|------------|
|  Planning                      | 8         | 30              | 90              | 128        |
|  Financial statement fieldwork | 12        | 80              | 270             | 362        |
|  Allocation audit fieldwork    | 6         | 30              | 60              | 96         |
|  Finalizing the audits         | 16        | 20              | 80              | 116        |
|  Post-fieldwork and reporting  | 8         | 10              | 20              | 38         |
| <b>Total</b>  | <b>50</b> | <b>170</b>      | <b>520</b>      | <b>740</b> |

## TYPE AND EXTENT OF SAMPLING TECHNIQUES TO BE UTILIZED

We'll apply substantive tests of details to examine certain transactions or accounts. Examples include confirmation of investments, reading of contracts and minutes, and examination of an entire transaction or account balance. For certain balances, we'll use directed testing to focus on risk rather than audit sampling. Substantive audit sampling will be used for larger or accounts with similar balances. Our sample sizes vary depending upon the desired level of assurance, the size of the account balance, expected misstatements, number of individually significant items in a sample population, and the assessment of tolerable misstatement for a particular account balance. Where possible, we'll use audit software to determine sample sizes and use a statistically based sampling approach that isn't biased and is representative of the account population.

## APPROACH TO AUDITING IT SYSTEMS

Moss Adams has a core group of technology professionals with technical and accounting backgrounds to serve our clients. Specifically, our collective technology team members hold credentials that include Certified Information Systems Auditor (CISA), Certified Information Security Manager (CISM), Certified Information System Security Professional (CISSP), Certified Information Technology Professional (CITP), and Certified in Risk and Information Systems Control (CRISC). These IT auditors work with many higher education and government agencies.

Our IT audit methodology, as discussed below, is based on AICPA guidelines, the internal control framework prescribed by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and the best practices for technology controls as defined by Control Objectives for Information and Related Technologies (COBIT).

| Feature            | Process   |
|--------------------|---|
| System Evaluation  | We evaluate both the general technology controls and specific application controls that are in effect. This approach requires our IT auditors to consider how the accounting systems, infrastructure, processes, and people work individually and together to make sure financial records are appropriately processed and reported.                 |
| Use of IT Auditors | Our financial auditors work with our IT auditors to assess how relevant systems and technology environment components are administered and supported. They also work with your accounting staff to evaluate how financial data is processed and system controls are maintained to enforce segregation of duties and access control.                 |
| Combining Efforts  | By combining both traditional financial auditors and IT auditors, we're able to gain overall audit efficiencies by having a better understanding of the control environment. We can then design a more effective testing approach, automate key testing procedures, and focus on areas that present the greatest risk to your financial statements. |

### ENGAGEMENT TIMELINE

The following is a proposed first-year engagement schedule for OCERS. We'll discuss any adjustments you may need when we meet with you.

| Service Description   | Proposed Timing       |
|---|-----------------------|
| <b>AUDITOR TRANSITION</b>   |                       |
| Schedule to meet with your prior auditor to review their working papers   | Upon Award            |
| <b>AUDIT PLANNING (PERFORMED REMOTELY)</b>  |                       |
| Meet with management for pre-audit planning and to obtain an understanding of systems, internal controls, and current-year issues; hold conference call with actuaries and investment custodian to coordinate timeline for key deliverables | December 2021         |
| Provide management with a detailed list of items needed to perform the audit, including the timing of when items are needed; provide listing of confirmations to be prepared along with templates   | December 2021         |
| <b>AUDIT FIELDWORK</b>  |                       |
| Send confirmations of cash, investment, and other accounts as deemed necessary  | January 2022          |
| Perform interim audit fieldwork in OCERS' office; if the COVID-19 pandemic restrictions continue, we're able to perform this interim work remotely and are successfully starting audits currently, even with new clients (one week)         | January/February 2022 |
| If not already provided by management, we'll review preliminary financial statement balances, including estimates of investment fair value adjustments, and provide to actuary for preliminary preparation of GASB 67 measurements          | February 2022         |



| <b>Service Description</b>  | <b>Proposed Timing</b>    |
|---|---------------------------|
| OCERS' fiscal management staff submits financial statements and backup documentation in an "audit preparation kit" to auditor; audit final fieldwork begins | April 2022                |
| Performance of final audit fieldwork, including tests of financial statements balances and account details and census data used in employer allocations     | Late April–Early May 2022 |
| Exit conference   | May 2022                  |
| <b>REPORT PREPARATION</b>   |                           |
| Present comments on draft of financial statements and draft audit report to OCERS management  | Before May 16, 2022       |
| <b>BOARD COMMUNICATIONS AND FINAL REPORTING</b>   |                           |
| Present final audit report, financial statements, and management letter to the Board of Retirement  | Before May 31, 2022       |
| Signed audit reports with audited financial statements and schedule of employer allocations due to OCERS  | Before May 31, 2022       |

---

## Anticipated Potential Audit Problems

At this time, we don't anticipate any audit problems. If problems arise, we'll communicate immediately with management and the financial oversight committee to determine the required course of action to solve the problem in a timely manner. One of our audit strategies is auditing the riskier audit areas at the beginning of the audit to identify issues as early as possible.

Based on previous experience with similar audits, there may be potential problems relating to accounting consistency, record availability, other accounting audit trail difficulties, as well as resource issues. The following are a few examples:

### Problem 1

Delays in obtaining prepared by client (PBC) lists, in locating source documentation, or providing adequate assistance due to personnel shortages.

### Solution 1

We train our personnel to always be polite and flexible in working with client personnel and to keep our management team apprised of any difficulties encountered that could potentially delay a project. Once we identify the need for additional assistance, we contact and work with the audit coordinator. Despite some delays, we've built flexibility into our schedule, and have the ability to add personnel to complete the audit on time.

---

### Problem 2

Project personnel needs fluctuate from low to high levels with little notice because of unforeseen project delays. For example, the audit identifies a control weakness that requires additional research and documentation.

### Solution 2

We have experience where an audit area is delayed or postponed until additional support can be obtained. In these instances, we may shift work to other audit steps that were scheduled for a later date or reduce staffing levels temporarily, and then increase staffing when additional documentation is provided. To make sure we provide quality work for each major audit area, we'll assign a core management team (managers, seniors, and staff, as appropriate) to supervise, train, and provide timely review.

We understand problems may arise or project needs may change. We believe our audit approach, hands-on management team, internal quality control review procedures, and budget and milestone monitoring procedures allow us to properly plan and manage resources throughout each engagement to make sure the most efficient means of contract execution are applied.

---

### Problem 3

Implementation of new standards.

### Solution 3

The new lease and fiduciary activities accounting standards will likely have an impact on OCERS. And, the GASB is preparing to issue a new standard on financial reporting that will significantly impact most governmental reporters. We'll provide accounting change implementation services as well as access to industry-specific live and archived webcasts to facilitate a better understanding of the potential impacts and challenges OCERS may face with the implementation of these standards.

---

As new standards are issued, we typically summarize their purpose and implementation timing in communications that go out throughout the year (i.e., published articles or webinars). Many of our clients prefer us to present an accounting update to those charged with governance during either entrance or exit communications, or both. Prior to any presentation to those charged with governance, we take an in-depth look with management to discuss each new standard's potential impact and help them strategize on best timing for implementation.

We'll be there to provide insight on new accounting requirements as they emerge as well as implementation suggestions and actively follow up on any further developments. It's our priority to keep you informed about changes in the financial landscape and our knowledgeable professionals have written several guides to help our clients implement these historic changes.

---

---

## Sample Formats for Required Reports

Below are the links to reports we've issued for clients similar to OCERS.

[Los Angeles City Employees' Retirement System Financial Statement \(ACFR\) Report for FY2020](#)

[New Mexico Educational Retirement Board ACFR Report](#)

[New Mexico Educational Retirement GASB No. 68 Allocation Report](#)

---

## Conflict of Interest

Moss Adams has always worked to embody the highest ethical standards, and we demonstrate our commitment to such standards daily. As an independent certified public accounting firm properly licensed for public practice, Moss Adams is required to meet the independence standards as defined by Generally Accepted Auditing Standards, the AICPA Code of Professional Conduct, and the US Government Accountability Office.

Prior to accepting a client relationship with your organization, we'll conclude our initial review of independence. This review will include an inquiry throughout the firm to make sure there aren't any identified circumstances that might impair our independence. To make sure we maintain our independence of your organization, we'll formally reassess our independence throughout the engagement and every year.

Additionally, each partner and client service professional, including associates (technicians) and interns, is required upon initial employment, and annually, to acknowledge his or her independence with respect to our clients. The independence compliance representation is focused on the independence of the individual and is designed to result in personal representations about matters that may impair independence. In this way, we routinely monitor our firm's independence from our attest clients.

We welcome any questions you may have regarding our review of independence.

---

## Litigation and Disciplinary Action

As with any large firm, Moss Adams is occasionally involved in addressing legal and regulatory issues. However, no action, suit, proceeding, inquiry, or investigation before or by any court or federal, state, municipal, or other government authority is pending, or to our knowledge is threatened against Moss Adams, related to or which would have a material effect upon the services contemplated herein.

---

## Additional Information

### OUR COMMITMENT TO BEING A DIVERSE, INCLUSIVE, AND ANTI-RACIST FIRM

At Moss Adams, we know that taking a stand as an anti-racist firm is essential to growing a sustainable firm that better reflects the communities we represent and the clients we serve. By focusing our efforts, we strive towards creating a safe environment for all our employees—one that fosters innovation by being inclusive of distinct perspectives and experiences.

Now more than ever, we're focused on a growing and maintaining a diverse, equitable, and inclusive culture both inside and outside the firm. We've made it part of our firmwide strategic plan, which includes dedicating ourselves to improving workforce diversity, and working towards systemic change as it relates to our profession.



**AWARENESS:** What we know



**ACTION:** What we do



**ACCOUNTABILITY:** What we deliver

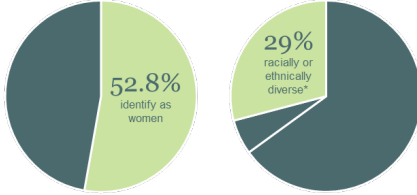
To help the firm stay accountable for our goals and drive strategy forward, we've formed the Inclusion & Diversity (I&D) Advisory Board. This board is made up of senior-level Moss Adams professionals dedicated to supporting the impact our BRGs are making in the regions. Together with firm leadership and our executive committee, they've developed a firmwide framework to help put our goals into action. This framework consists of three key components: Awareness—assessing our firmwide I&D progress and understanding the experiences of our underrepresented professionals; Action—

understanding and completing the necessary steps we need to take to foster a more diverse, inclusive, and anti-racist firm; and Accountability—evaluating our efforts to verify we're modeling our values and anti-racist behavior at all levels.

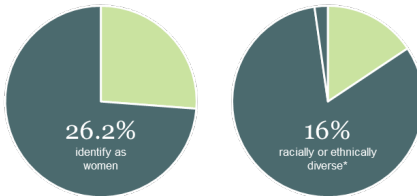
On the following pages, we've detailed what we're doing to build out these key components.

**AWARENESS**

**FIRMWIDE DIVERSITY**



**PARTNER-LEVEL DIVERSITY**



\*Smaller segments on charts indicate professionals who chose not to disclose racial or ethnic background.

Our awareness objective includes evaluating the firm’s I&D progress and seeking to understand the experience of our Black, Indigenous, and people of color (BIPOC), as well as that of our underrepresented employees as a whole.

To improve on awareness, we made engaging our people a priority in 2020. The steps we took to increase our awareness included providing education for our firm by embedding I&D topics into all milestone programs in our firm’s online learning portal, Moss Adams University. Additionally, during the COVID-19 pandemic and after the death of George Floyd, our regions and BRGs hosted forums for employees to discuss issues they face such as systemic racism, racial equity, inclusion, unconscious biases, and balancing the demands of parenting during a pandemic.

**Moss Adams by the Numbers**

We want our workforce to reflect the communities in which we work and the clients we serve. After all, bringing together professionals with different backgrounds and experiences fosters inclusion in addition to innovation in our work approach. To hold ourselves accountable for achieving a goal of being more diverse, we must first be aware of our progress so far. Overall, our racial or ethnic diversity didn’t significantly change in 2020 compared to 2019, but we’re taking steps to improve our diversity at both firmwide and partnership levels.

**Feedback from Our People**

Throughout 2020, we conducted pulse surveys to check in on the well-being of our people and how they felt about our I&D efforts. We compared findings against the national external benchmark performed by Glint, which includes the results of a broader set of companies to better contextualize our results and identify opportunities for improvement. Moss Adams scored above the external benchmark in the categories of equal opportunity, inclusion, and belonging.



**ACTION**

We used what we learned from 2020 to strategically plan how we'll accelerate our I&D activities and build out our five-year I&D road map. We know that the actions we take will need to grow and evolve over time to reach our goals, but it must start somewhere. For our first step, we chose five bold actions for 2021:



**Attracting Diverse Talent**

One contributing factor in building a diverse workforce is cultivating the next generation now. We've taken steps to invest in the future of diversity in accounting by strengthening the pipeline of diverse talent. These efforts include the following:

*Partnership with Junior Achievement*

In 2020, we donated \$25,000 to support translating one not-for-profit's middle school offerings into the Spanish language to increase access to financial literacy education.

*Ignite Scholarships*

We award this scholarship to 15 college freshmen and sophomores from diverse backgrounds who are pursuing a bachelor's degree in accounting or a related field each year. This year, we expanded our program to include funding five additional scholarships earmarked for students attending Historically Black Colleges and Universities (HBCUs).

*Liftoff Recruitment Webinar*

Our recruitment team shares an annual webinar for underrepresented college freshman and sophomores highlighting the benefits and opportunities available with a career in public accounting. The goal of this webinar is to not only provide information on the profession, but also educate the students on how to navigate the recruitment and hiring process.

*Guide Pilot Steer (GPS) Internship*

This precursor to our traditional accounting and consulting internship is designed to provide an inside look at the firm's operational functions with the hopes of converting participants to full-time hires. It's available to freshman, sophomores, or juniors pursuing a bachelor's degree program.

### *PhD Project*

The PhD Project exists to increase workplace diversity by increasing the diversity of business school faculty who encourage, mentor, support, and enhance the preparation of tomorrow's leaders. The goal is to produce a significantly larger talent pipeline of BIPOCs for business leadership positions. We've pledged a \$75,000 donation over three years to the PhD Project and have representation on its board of directors.

### *Diversity-Focused, National Recruiting Conventions*

We virtually attended national recruiting conventions focused on workforce diversity including the National Association of Black Accountants (NABA) Student Conference, Association of Latino Professionals for America (ALPFA) Student Symposium, and the Service Academy Career Conference (SACC).

## **Developing Talent**

We want the employees at our firm to feel like they have an opportunity to learn, grow, and be included throughout every step of their career at Moss Adams. One of the biggest steps we've taken to give our underrepresented staff a safe space to learn and develop is through our BRGs.

### *Business Resource Groups*

BRGs are networks of Moss Adams professionals founded and led at local and regional levels to foster advocacy and create community, camaraderie, and connection while contributing to the firm's business objectives. Members of our BRGs participate in sponsoring and attending corporate and community events, driving recruitment efforts, and designing continuing education to empower and develop our people. Currently, our BRGs include Asian, Black, Disability, Forum W (women), LatinX, PRiDE (LGBTQ+ and allies), Racial Equity, and Veterans groups. Some of the highlights from our BRGs include the following:

- Launching a multipart conversation around race, *Courageous Conversations*, to provide opportunities for our professionals to continue their learning and growth around racial equity and social justice in line with our commitment to being an anti-racist firm
- Sponsoring the NABA conference, driving on-site recruiting and awarding scholarships
- Launching a workshop, *Allies in Action*, created by our PRiDE BRG, where our people learn tactics to show up as better allies to their peers
- Amplifying Pride Month celebrations firm wide through networking events, Pride Parade viewing parties, and allyship workshops
- Sponsoring ALPFA convention, driving on-site recruitment and professional development
- Participating in SACC, the only job fair exclusively for alumni of combined US Services Academies, driving on-site recruitment

## **Advancing Talent**

We understand that we can't create a true diverse workforce without accelerating the advancement of our underrepresented groups as leaders. We've successfully implemented growth initiatives for women, and we're looking forward to adapting these resources to help advance our BIPOC professionals.

### *Succession Planning Playbook*

This playbook provides insight and strategies on increasing the diverse representation in leadership roles and at the partner level. This playbook was originally developed to support women at the highest levels, but we're now in the position to leverage our other BRGs to apply its principles across other underrepresented groups. We're excited to see how it positively impacts our culture in years to come.

### *Path to Success Series*

To help women and other underrepresented groups at Moss Adams build and maintain successful mentoring relationships and build external connections, we created a series of mentoring guides:

- A Guide for Mentors and Protégés
- A Guide to Building and Leveraging Your Network
- Investing in Your Career by Helping Others

### *GroWth Series*

In the past year, we welcomed 14 women to our fifth cohort of the GroWth series, a year-long leadership program targeting high-potential, women senior managers. Three of our newest partners are GroWth graduates. To date, five graduates of the GroWth Series have become partners.

## **Retaining Talent**

Retaining diverse talent is equally important to attracting diverse talent. To retain talent at our firm, we're increasing our investment in our BRGs and enhancing our benefits offerings to stay ahead of the competition. In 2020, BRGs created firmwide resources and events to deepen awareness around the issues facing underrepresented communities, drive communication, and educate our people.

Another way we offer our employees benefits that support a diverse workforce including transgender surgery benefits, gender-neutral parental leave, and a Maven Maternity program to support new parents and return-to-work challenges.

### *Retention Metrics*

In 2020, we reduced our turnover percentage in all self-identified underrepresented communities compared to 2019. Here's where we've improved at a glance:

- Women professionals: 1.9% improvement
- Hispanic or Latinx: 6% improvement
- American Indian / Alaskan Native: 11.5% improvement
- Black or African American: 18.1% improvement

## The Impact of the Fight for Racial Justice

The 2020 deaths of George Floyd, Breonna Taylor, Ahmaud Arbery, and others deeply affected the world, and our firm responded. Our I&D efforts shifted to more precisely focus on being an anti-racist firm.

In the aftermath of the 2020 assaults on Black lives, the Black BRG provided education opportunities with internal resources to increase awareness and drive individual anti-racism work for everyone across the firm.

### EMBRACING EQUITY AND JUSTICE FOR BLACK AMERICANS CAMPAIGN

As a firm, we stood with the Black Lives Matter (BLM) movement to contribute to three Black-led organizations fighting systemic racism in the United States. This campaign was the largest giving campaign to date, and our people gave generously—team members across the firm donated more than \$50,000. When combined with matching from the Moss Adams Foundation, our total contributions exceeded our goal of raising \$100,000.

| ORGANIZATION NAME        | TEAM MEMBER DONATIONS | TOTAL DONATED (with matching) |
|--------------------------|-----------------------|-------------------------------|
| NATIONAL URBAN LEAGUE    | \$19,425              | \$37,485                      |
| RACE FORWARD             | \$11,305              | \$21,235                      |
| EQUAL JUSTICE INITIATIVE | \$25,575              | \$48,217                      |
| <b>TOTAL</b>             | <b>\$56,305</b>       | <b>\$106,936</b>              |

## ACCOUNTABILITY

The final component of our I&D framework involves evaluating our efforts to verify we’re living our values and modeling anti-racist behavior across the firm. We want to hold ourselves accountable and share that responsibility among partners and staff to strengthen our culture. Some specific steps we’re taking include committing to transparent reporting of our metrics, goals, and progress at regular intervals, and embedding I&D accountability measures at every level of business, from intern to partner.

We’re proud that our efforts to foster a more diverse and inclusive environment have produced positive results, but we understand that there are still improvements to make and will strive to increase those improvements year over year.

For more information on our I&D efforts and diversity statistics, you can view our full 2020 report [here](#).

## PEER REVIEW REPORT



### Report on the Firm's System of Quality Control

October 8, 2020

To the Partners of Moss Adams LLP and the National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of Moss Adams LLP (the firm) applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2020. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary). The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

#### Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

#### Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

#### Required Selections and Considerations

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act; audits of employee benefit plans, audits performed under FDICIA, audits of broker-dealers, and examinations of service organizations [SOC 1 and SOC 2 engagements].

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

#### Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Moss Adams LLP applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2020, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Moss Adams LLP has received a peer review rating of *pass*.

A handwritten signature in black ink that reads 'Cherry Bekaert LLP'.

Cherry Bekaert LLP

Peer Review Report 2020 (Cont.)



National Peer  
Review Committee

October 29, 2020

Christopher Schmidt  
MOSS ADAMS LLP  
999 3RD AVE STE 2800  
Seattle, WA 98104-4057

Dear Christopher Schmidt:

It is my pleasure to notify you that on October 29, 2020, the National Peer Review Committee accepted the report on the most recent System Review of your firm. The due date for your next review is October 31, 2023. This is the date by which all review documents should be completed and submitted to the administering entity.

As you know, the report had a peer review rating of pass. The Committee asked me to convey its congratulations to the firm.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Michael Fawley". The signature is fluid and cursive.

Michael Fawley  
Chair, National PRC  
+1.919.402.4502

cc: Samuel Johnson, Erica Forhan

Firm Number: 900010050024

Review Number: 577383

**EXCEPTIONS TO THE CONTRACT**

Exceptions to the contract are attached on the following pages.

*Assurance, tax, and consulting offered through Moss Adams LLP.  
Investment advisory services offered through Moss Adams Wealth Advisors LLC.*

*Moss Adams | Proposal for Orange County Employees Retirement System 56*

Orange County Employee Retirement System

RFP: Financial Auditor Services

Exceptions/Objections

This Proposal is contingent upon completion of the Moss Adams new client acceptance process, satisfaction of applicable professional standards (including communications with the prior auditors), and execution of a mutually acceptable contract. Additionally, applicable professional standards, which apply to any independent audit firm in the United States, require certain agreements and acknowledgements between an auditor and management of the entity being audited, and we would expect to include such provisions in any services agreement executed between the parties. Moss Adams is providing an example of the applicable provisions in our sample Engagement Letter/PSA included with this proposal.

We have successfully signed professional services agreements with thousands of clients, including numerous public entities, and we commit to working in good faith to successfully negotiate a mutually agreeable agreement for this engagement on a timely basis should we be awarded this work.

With regards to the terms and conditions set forth in the RFP, Moss Adams suggests the following exceptions:

| Section No.    | Page No. | Term   | Proposed Modification  | Rationale   |
|----------------|----------|--|--|---|
| RFP §3         | 3        | ...<br><ul style="list-style-type: none"> <li>Professional Liability: \$2M per occurrence, \$3M aggregate</li> </ul> OCERS must be listed as an additional insured on the above policies.  | ...<br><ul style="list-style-type: none"> <li>Professional Liability: \$2M per <del>claim occurrence</del>, \$3M aggregate</li> </ul> OCERS must be listed as an additional insured on <u>Commercial General Liability and Automobile Liability</u> . <del>on the above policies.</del>  | Clarifying insurance requirements to comport with existing policies.              |
| RFP§12         | 9        | ...Make such investigation as it deems necessary to determine the respondent’s ability to furnish the required services, and the respondent agrees to furnish all such information for this purpose as OCERS may request.                                | ...Make such investigation as it deems necessary to determine the respondent’s ability to furnish the required services, and the respondent agrees to furnish all <u>reasonable requests for</u> such information for this purpose as OCERS may request.   | Clarifying extent of information provided.  |
| Exhibit A – §D | 12       | All working papers and reports must be retained at the auditor’s expense for a minimum of five (5) years, unless the firm is notified by OCERS of the need to extend the retention period. The auditor will be required to make working papers available | All working papers and reports must be retained at the auditor’s expense for a minimum of five (5) years, unless the firm is notified by OCERS of the need to extend the retention period. <del>The auditor will be required to make working papers available to OCERS upon request.</del><br>In addition, the firm shall respond to the reasonable inquiries of | Addressing access to our working papers (which may be made available to oversight |

|                    |    |   |   |   |
|--------------------|----|---|---|---|
|                    |    | to OCERS upon request. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.   | successor auditors and allow successor auditors to review <del>documentation working papers</del> relating to <u>fees and expenses for the services matters of continuing accounting significance.</u>  | entities) to protect the integrity of the audit.  |
| Exhibit D - §2.1   | 16 | ... Contractor represents and warrants to OCERS that it will perform the Services in a professional and workmanlike manner, in accordance with best industry standards and practices used in well-managed operations performing services similar to the Services.   | ... Contractor represents <del>and warrants</del> to OCERS that it will perform the Services in a professional and workmanlike manner, in accordance with <del>best</del> industry standards and practices used in well-managed operations performing services similar to the Services.   | Providing representations in lieu of warrants.  |
| Exhibit D – §2.4.8 | 19 | Contractor shall allow a representative of OCERS during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.  | Contractor shall allow a representative of OCERS <u>upon reasonable notice and</u> during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents <u>relating to the fees and expenses for the services under created pursuant to</u> this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the <u>fees and expenses for the services under this</u> Agreement for a period of four (4) years from the date of final payment under this Agreement.   | Clarifying audits focused on information pertaining to fees and expenses charged by Moss Adams. |
| Exhibit D - §2.6   | 19 | To the fullest extent permitted by law, Contractor shall immediately indemnify and hold OCERS, the members of the OCERS Board of Retirement (each a “Board member”), and OCERS’ officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury of any kind, in law or equity, to property or persons, including wrongful death (collectively, “Indemnity Claims”), in any manner arising out of, pertaining to, or incident to any alleged acts, errors, omissions, or negligence of Contractor, its officials, officers, employees, subcontractors, contractors, or agents in connection with the performance of the Services, or this Agreement, including without limitation the payment of all consequential damages, and attorneys’ fees and costs, including expert witness fees. Contractor’s duty to indemnify does not extend to the Indemnity Claims caused by OCERS sole negligence or willful misconduct. | To the fullest extent permitted by law, Contractor shall immediately indemnify and hold OCERS, the members of the OCERS Board of Retirement (each a “Board member”), and OCERS’ officials, officers, employees, volunteers, and agents free and harmless from any and all <u>third party</u> claims, demands, causes of action, costs, expenses, liability, loss, <del>or damage, arising out of or injury damage to real or any kind, in law or equity, to</del> property or <u>bodily injury to persons (including wrongful death)</u> (collectively, “Indemnity Claims”), <del>in any manner to the extent caused by arising out of the negligent, pertaining to, or incident to any alleged acts, errors, or omissions, or negligence of</del> Contractor, its <del>officials,</del> officers, employees, subcontractors, contractors, or agents in connection with the performance of the Services <u>performed under, or</u> this Agreement. <del>including without limitation the payment of all consequential damages, and attorneys’ fees and costs, including expert witness fees.</del> Contractor’s duty to indemnify does not extend to the Indemnity Claims caused by OCERS sole negligence or willful misconduct. <u>In order to seek or receive indemnification hereunder, OCERS shall provide Contractor with prompt written notice of such claim and cooperate with Contractor in handling the claim.</u> | Clarifying indemnity and providing indemnification procedures.                                  |



|                        |    |  |   |   |
|------------------------|----|--|---|---|
|                        |    | <p>Contractor shall immediately defend, with legal counsel reasonably agreed to by OCERS and at Contractor's own cost, expense, and risk, any and all claims, suits, actions, or other proceedings of every kind that may be brought or instituted against OCERS or its Board members, officials, officers, employees, volunteers, and agents; excluding, however, such claims, suits, actions, or other proceedings arising from OCERS' sole negligence or willful misconduct. Contractor shall control the defense or settlement of any such action, except that Contractor will not have the right to settle or compromise the claim without the consent of OCERS. Contractor shall pay and satisfy any judgment, award, or decree that may be rendered against OCERS or its Board members, officials, officers, employees, volunteers, and agents as part of any such claim, suit, action, or other proceeding. Contractor shall also reimburse OCERS for the cost of any settlement paid by OCERS or its Board members, officials, officers, employees, agents, or volunteers as part of any such claim, suit, action, or other proceeding. Such reimbursement shall include payment for OCERS' attorneys' fees and costs, including expert witness fees.</p> | <p><del>Contractor shall immediately defend, with legal counsel reasonably agreed to by OCERS and at Contractor's own cost, expense, and risk, any and all claims, suits, actions, or other proceedings of every kind that may be brought or instituted against OCERS or its Board members, officials, officers, employees, volunteers, and agents; excluding, however, such claims, suits, actions, or other proceedings arising from OCERS' sole negligence or willful misconduct. Contractor shall control the defense or settlement of any such action, <u>in its sole discretion, with counsel of its own choosing.</u>, except that Contractor will not have the right to settle or compromise the claim without the consent of OCERS. Contractor shall pay and satisfy any judgment, award, or decree that may be rendered against OCERS or its Board members, officials, officers, employees, volunteers, and agents as part of any such claim, suit, action, or other proceeding. Contractor shall also reimburse OCERS for the cost of any settlement paid by OCERS or its Board members, officials, officers, employees, agents, or volunteers as part of any such claim, suit, action, or other proceeding. Such reimbursement shall include payment for OCERS' attorneys' fees and costs, including expert witness fees.</del></p> |   |
| Exhibit D - §2.7.2 (a) | 20 | <p>Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001). Contractor shall maintain limits no less than two million dollars (\$2,000,000) per occurrence, or the full per occurrence limits of the policies available, whichever is greater, for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with general aggregate limit or product-completed operations aggregate limit is used, including but not limited to form CG 2503, either the general aggregate limit shall apply separately to this Agreement or the general</p>  | <p>Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001). Contractor shall maintain limits no less than two million dollars (\$2,000,000) per occurrence, <del>or the full per in combination with umbrella coverage, occurrence limits of the policies available, whichever is greater,</del> for bodily injury, personal injury, and property damage. <del>If Commercial General Liability Insurance or other form with general aggregate limit or product-completed operations aggregate limit is used, including but not limited to form CG 2503, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.</del></p>  | <p>Clarifying insurance requirements to comport with existing policies.</p> |

|                        |       |  |  |  |
|------------------------|-------|--|--|--|
|                        |       | aggregate limit shall be twice the required occurrence limit.  |  |  |
| Exhibit D - §2.7.2 (b) | 21    | Automobile Liability. Coverage shall be at least as broad as the latest version of the Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto). Contractor shall maintain limits no less than one million dollars (\$1,000,000)per accident for bodily injury and property damage. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.  | Automobile Liability. <del>Coverage shall be at least as broad as the latest version of the Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).</del> Contractor shall maintain limits no less than one million dollars (\$1,000,000)per accident for bodily injury and property damage. The automobile liability policy shall cover all owned, non-owned, <del>and</del> hired automobiles.  | Clarifying insurance requirements to comport with existing policies.   |
| Exhibit D - §2.7.3     | 21-22 | <u>All Coverages.</u> The general liability and automobile liability policy shall include or be endorsed to state that: (1) OCERS, its Board, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to work by or on behalf of the Contractor, including materials, parts, or equipment furnished in connection with such work using as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37; and (2) the insurance coverage shall be primary insurance as respects the OCERS, its directors, officials, officers, employees, agents, and volunteers using as broad a form as CG 20 01 04 13, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor’s scheduled underlying coverage. Any insurance or self-insurance maintained by OCERS, its Boardmembers, officials, officers, employees, agents, and volunteers shall be excess of the Contractor’s insurance and shall not be called upon to contribute with it in any way.<br>(a) The insurance policies required above shall contain or be endorsed to contain the following specific provisions:<br>(i) The policies shall contain a waiver of transfer rights of recovery (“waiver of subrogation”) against OCERS, its Board members, officers, employees, agents, and volunteers, for any claims arising out of the work of Contractor.<br>(ii) Policies may provide coverage | <u>All Coverages.</u> The <del>commercial</del> general liability and automobile liability policy shall include or be endorsed ( <u>blanket endorsement acceptable</u> ) to state that: (1) OCERS, its Board, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to work by or on behalf of the Contractor, including materials, parts, or equipment furnished in connection with such work using as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37; and (2) the insurance coverage shall be primary insurance as respects the OCERS, its directors, officials, officers, employees, agents, and volunteers using as broad a form as CG 20 01 04 13, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor’s scheduled underlying coverage. Any insurance or self-insurance maintained by OCERS, its Boardmembers, officials, officers, employees, agents, and volunteers shall be excess of the Contractor’s insurance and shall not be called upon to contribute with it in any way.<br>(a) The insurance policies required above shall contain or be endorsed to contain the following specific provisions:<br>(i) The policies <u>for commercial general liability and automobile</u> shall contain a waiver of transfer rights of recovery (“waiver of subrogation”) against OCERS, its Board members, officers, employees, agents, and volunteers, for any claims arising out of the work of Contractor.<br>(ii) Policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to OCERS under such policies. Contractor shall be solely responsible for deductible and/or self-insured retention <del>and OCERS, at its option, may require Contractor to secure the</del> | Clarifying insurance requirements to comport with existing policies, notification requirements, and waiver of subrogation only available on CGL, auto and worker’s comp. |

|                           |           |   |  |  |
|---------------------------|-----------|---|--|--|
|                           |           | <p>which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to OCERS under such policies. Contractor shall be solely responsible for deductible and/or self-insured retention and OCERS, at its option, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit. The insurance policies that contain deductibles or self-insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of OCERS.</p> <p>(iii) Prior to start of work under this Agreement, Contractor shall file with OCERS evidence of insurance as required above from an insurer or insurers certifying to the required coverage. The coverage shall be evidenced on a certificate of insurance signed by an authorized representative of the insurer(s).</p> <p>(iv) Each policy required in this section shall contain a policy cancellation clause that provides the policy shall not be cancelled or otherwise terminated by the insurer or the Contractor or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to OCERS, Attention: <b>Jim Doezie</b>.</p> | <p><del>payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit. The insurance policies that contain deductibles or self-insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of OCERS.</del></p> <p>(iii) Prior to start of work under this Agreement, Contractor shall file with OCERS evidence of insurance as required above from an insurer or insurers certifying to the required coverage. The coverage shall be evidenced on a certificate of insurance signed by an authorized representative of the insurer(s).</p> <p>(iv) <u>Contractor shall use reasonable efforts to provide</u> <del>Each policy required in this section shall contain a policy cancellation clause that provides the policy shall not be cancelled or otherwise terminated by the insurer or the Contractor or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to</del> OCERS, Attention: <b>Jim Doezie</b>, <u>of any cancellation in coverage provided, however, that Contractor shall not be obligated to provide such notice if, concurrently with such cancellation, Contractor obtains coverage from another insurer meeting the requirements described herein.</u></p> |  |
| <p>Exhibit D - §2.9.1</p> | <p>23</p> | <p><u>Documents &amp; Data; Licensing of Intellectual Property.</u> This Agreement creates a non-exclusive and perpetual license for OCERS to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor</p>  | <p><u>Documents &amp; Data Ownership; Licensing of Intellectual Property.</u> <u>OCERS shall own all final reports and other completed deliverables created under this Agreement and delivered to OCERS, excluding any Consultant Material (defined below) contained or embodied therein ("Deliverables"). However, OCERS may not alter or amend any Deliverables issued under Contractor's name. Contractor may retain a copy of Deliverables for archival purposes. Contractor shall own: (i) its working papers and any engagement documentation; and (ii) any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials, or other intellectual property which may have been discovered, created,</u></p>   | <p>Clarifying OCERS ownership of final deliverables and Moss Adams' ownership (and retention) of intellectual property, working papers, works in progress, and</p> |

|                        |    |   |   |  |
|------------------------|----|---|---|--|
|                        |    | <p>under this Agreement ("Documents &amp; Data"). Contractor shall deliver to OCERS on demand or upon the termination or expiration of this Agreement, all such Documents &amp; Data which shall be and remain the property of the OCERS. If OCERS uses any of the data, reports, and documents furnished or prepared by Contractor for use in Services other than as shown on Exhibit A, Contractor shall be released from responsibility to third parties concerning the use of the data, reports, and documents. Contractor may retain copies of the materials. OCERS may use or reuse the materials prepared by Contractor without additional compensation to Contractor.</p> | <p><del>received, or developed by Contractor either prior to or as a result of providing services under the Agreement (collectively, "Contractor Materials").</del> This Agreement creates a non-exclusive and <del>non-transferable perpetual</del> license for OCERS to copy, use, modify, <del>or reuse, or sublicense Contractor Material for its own internal use only and only for the purposes for which they are delivered to the extent they form part of Deliverable.</del> <del>any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents &amp; Data").</del> Contractor shall deliver to OCERS on demand <del>or upon the termination or expiration of this Agreement,</del> all such <del>D</del>documents &amp; <del>D</del>data <del>provided by OCERS</del> which shall be and remain the property of the OCERS. <del>If OCERS uses any of the data, reports, and documents furnished or prepared by Contractor for use in Services other than as shown on Exhibit A, Contractor shall be released from responsibility to third parties concerning the use of the data, reports, and documents.</del> Contractor may retain copies of the materials. OCERS may use or reuse the materials prepared by Contractor <u>pursuant to this Agreement</u> without additional compensation to Contractor.</p> | <p>general skills and know-how.</p>                      |
| Exhibit D - §2.9.2 (g) | 24 | <p>Confidentiality.<br/>... Upon request by OCERS and upon the termination or expiration of this Agreement for any reason, Contractor shall promptly return to OCERS all copies, whether in written, electronic, or other form or media, of Customer Data in its possession or in the possession of its employees or agents, or securely dispose of all such copies, and certify in writing to OCERS that such Customer Data has been returned to OCERS or disposed of securely.</p>  | <p>Confidentiality.<br/>... Upon request by OCERS <del>and upon the termination or expiration of this Agreement for any reason,</del> Contractor shall promptly <del>destroy/return to OCERS</del> all copies, whether in written, electronic, or other form or media, of Customer Data in its possession or in the possession of its employees or agents, <del>or securely dispose of all such copies,</del> and certify in writing to OCERS that such Customer Data has been <del>returned to OCERS or</del> disposed of securely.</p>  | <p>Clarifying destruction of documents upon request.</p> |
| NEW                    |    |   | <p><u>IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.</u></p>   | <p>Providing for mutual limitations of liability.</p>    |

|     |  |  |  |   |
|-----|--|--|--|---|
| NEW |  |  | <p><u>No Third-Party Beneficiaries</u><br/> <u>OCERS and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.</u></p> | <p>Clarifying there are no third party beneficiaries to the contract.</p> |
|     |  |  |  |   |



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Cynthia Hockless, Director of Human Resources  
**SUBJECT:** REINSTATEMENT OF EMERGENCY PAID SICK LEAVE (EPSL)

---

### Recommendation

Staff recommends that the Board of Retirement approve the reinstatement of Emergency Paid Sick Leave (EPSL) for Orange County Employees Retirement System (OCERS) Direct employees from December 31, 2021, through April 07, 2022. Approval and adoption of emergency leave practices will provide employees with compensation relief during COVID-19-related absences. The recommendation includes the following:

1. Authorize the Chief Executive Officer, or Designee, to administer a 2022 Emergency Paid Sick Leave Program effective December 31, 2021, to April 7, 2022, that provides employees up to 40 hours of paid sick leave for qualifying COVID-related absences. The use of this leave will be retroactively applied.
2. Authorize the Chief Executive Officer, the discretion to provide up to 40 additional hours of paid sick leave for qualifying COVID-related absences and to extend the program to June 30, 2022, in a manner consistent with combating the health pandemic.
3. Authorize the Chief Executive Officer, or Designee, after review by Counsel and notification to the Board, to administer future state and/or federal statutorily required leave programs in a manner consistent with the parameters approved by the Board for the health pandemic.

This recommendation mirrors the reinstatement of EPSL approved by the Orange County Board of Supervisors for County of Orange employees at their January 11, 2022, Board meeting.

### Background/Discussion

The Families First Coronavirus Response Act (FFCRA), effective April 1, 2020, required employers to provide up to 80 hours of Emergency Paid Sick Leave (EPSL) and 12 weeks of Emergency Family Medical Leave (EFMLA) for qualifying absences related to the COVID-19 pandemic. The FFCRA required that these leaves be provided through December 31, 2020.

At the January 19, 2021 Board meeting, OCERS CEO, Steve Delaney, recommended that OCERS approve an extension for eligible OCERS Direct employees to use remaining balances of EPSL for a qualifying reason through June 17, 2021. In addition, the CEO provided 40 additional hours of EPSL to eligible employees for qualifying reasons effective January 1, 2021, through June 17, 2021. To assist employees who were impacted by COVID-19.

In March 2021, in response to the public health emergency caused by COVID-19, the California legislature adopted Senate Bill (SB) 95. The bill added Labor Code section 248.2, which required that employers provide COVID-19 Supplemental Paid Sick Leave (SPSL) to their employees if an employee could not work or telework for certain qualifying reasons related to COVID-19. OCERS following the law administered the required leave program that expired on September 30, 2021.

Qualifying reasoning to use paid sick leave directly correlates to the health pandemic and are as follows:

- The employee is advised to self-quarantine due to concerns related to Covid-19
- The employee is attending a vaccine appointment
- The employee is experiencing symptoms related to the vaccine that prevents the employee from being able to work or telework
- The employee is experiencing symptoms of Covid-19 and seeking a medical diagnosis
- The employee is caring for a family member who is quarantining
- The employee is caring for a child whose school or place of care is closed or otherwise unavailable due to Covid-19

On January 11, 2022, the Orange County Board of Supervisors approved to reinstate Emergency Paid Sick Leave (EPSL) for their employees to be used with qualifying reasons as outlined in SB 95, listed above.

OCERS CEO, Steve Delaney, is requesting the Board of Retirement grant the same extension of leave time and provisions to the forty-one (41) OCERS Direct employees as recommended below:

1. Authorize the Chief Executive Officer, or Designee, to administer a 2022 Emergency Paid Sick Leave Program effective December 31, 2021, to April 7, 2022, that provides employees up to 40 hours of paid sick leave for qualifying COVID-related absences. The use of this leave will be retroactively applied.
2. Authorize the Chief Executive Officer, the discretion to provide up to 40 additional hours of paid sick leave for qualifying COVID-related absences and to extend the program to June 30, 2022, in a manner consistent with combating the health pandemic.
3. Authorize the Chief Executive Officer, or Designee, after review by Counsel and notification to the Board, to administer future state and/or federal statutorily required leave programs in a manner consistent with the parameters approved by the Board for the health pandemic.

**Attachment:**

Memo dated January 05, 2022, from Frank Kim to County of Orange Board of Supervisors requesting EPSL reinstatement. Approved at January 11, 2022, Board meeting.

**Submitted by:**



**CH - Approved**

Cynthia Hockless  
Director of Human Resources



County Executive Office

Memorandum

January 5, 2022

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

Handwritten signature of Frank Kim

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US
Date: 2022.01.06 12:53:27 -0800

RECEIVED
2022 JAN -6 PM 1:53
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

S33C

The County Executive Office is requesting a Supplemental Agenda Staff Report for the January 11, 2022, Board Hearing.

Agency: County Executive Office
Subject: Approve Compensation Relief for COVID-19 Related Absences
Districts: All Districts

Reason for supplemental: The County Executive Office is requesting this Supplemental item be placed on the January 11, 2022, Board agenda in order to avoid delayed compensation relief during COVID-19 related absences. The Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur: [Signature]
Andrew Do, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel



Agenda Item S33C  
Clerk's Use Only



**AGENDA STAFF REPORT**

**MEETING DATE:** 1/11/22  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** All Districts  
**SUBMITTING AGENCY/DEPARTMENT:** County Executive Office  
**DEPARTMENT HEAD REVIEW:** Colette Farnes  
Digitally signed by Colette Farnes  
 Department Head Signature  
**DEPARTMENT CONTACT PERSON(S):** Colette Farnes (714) 834-2836  
 Susan Rohde (714) 834-7330

RECEIVED  
 2022 JAN -6 PM 2:12  
 CLERK OF THE BOARD  
 ORANGE COUNTY  
 BOARD OF SUPERVISORS

**SUBJECT:** Approve Compensation Relief for COVID-19 Related Absences

**CEO CONCUR**

Digitally signed by Frank Kim  
 DN: cn=Frank Kim, o=County of  
 Orange, ou=CEO,  
 email=frank.kim@ocgov.com,  
 c=US  
 Date: 2022.01.06 12:53:45 -0800

CEO Signature

**COUNTY COUNSEL REVIEW**

Approved as to Form

Action

County Counsel Signature

**CLERK OF THE BOARD**

Discussion

3 Votes Board Majority

**Budgeted:** Yes

**Current Year Cost:** See Financial Impact Section

**Annual Cost:** See Financial Impact Section

**Staffing Impact:** No

**# of Positions:** N/A

**Sole Source:** N/A

**Current Fiscal Year Revenue:** N/A

**Funding Source:** See Financial Impact Section

**County Audit in last 3 years:** No

**Prior Board Action:** 12/15/2020 #S37N

**RECOMMENDED ACTION(S):**

1. Authorize the County Executive Officer, or Designee, to administer a 2022 Emergency Paid Sick Leave Program effective December 31, 2021 to April 7, 2022, that provides employees up to 40 hours of paid sick leave for qualifying COVID-related absences.
2. Authorize the County Executive Officer the discretion to provide up to 40 additional hours of paid sick leave for qualifying COVID-related absences and to extend the program to June 30, 2022, in a manner consistent with the Board of Supervisors-approved parameters.
3. Authorize the County Executive Officer, or Designee, after review by County Counsel and notification to the Board of Supervisors, to administer future state and/or federal statutorily required leave programs in a manner consistent with the parameters approved by the Board of Supervisors on March 31, 2020.

**SUMMARY:**

Approval and adoption of emergency leave practices will provide employees with compensation relief during COVID-19-related absences.

**BACKGROUND INFORMATION:**

The COVID-19 pandemic has continued to disrupt school, business and government operations. On March 13, 2020, the County Executive Office issued a notice that employees who have exhausted all leave balances would be advanced up to 80 hours of Advanced Sick Leave if they needed to stay home to care for a child whose school closed (and could not telework). The ability to utilize Advanced Sick Leave is ongoing.

On March 18, 2020, the President of the United States signed HR 6201 into law, otherwise known as the Families First Coronavirus Response Act (FFCRA), with an effective date of April 1, 2020 through December 31, 2020. This law provided emergency paid sick leave and expanded paid leave under the Family and Medical Leave Act (FMLA) for COVID-19-related absences.

- To ensure that the County complied with FFCRA, on March 31, 2020, your Honorable Board of Supervisors (Board) approved the implementation of the statutorily required leaves. On December 15, 2020, the Board extended employees' ability to use Emergency Paid Sick Leave (EPSL) and Health Care Providers and Emergency Responders COVID-19 Leave. All statutorily required state and federal leave protections under the FFCRA and California Senate Bill 95 (SB 95) expired on December 31, 2020 and September 30, 2021, respectively.

To ensure that the County maximizes the health and safety of its employees and the public they serve, the following recommendations are before the Board for your consideration:

**Emergency Paid Sick Leave (EPSL)**

Eligible Full-Time Regular and Limited-Term employees shall be allowed to receive up to 40 hours of EPSL paid sick leave at their regular rate of pay for any qualifying leave. Administration of this EPSL shall be consistent with parameters established by SB 95.

Extra-Help, Part-Time and other employees as defined by law will receive an amount of EPSL hours tied to their regular work schedule, as previously administered by the County in 2020-2021. Such employees will also receive their regular rate of pay for any EPSL qualifying leave.

The Board approved the recommendation that the County would not apply the financial caps provided by the FFCRA for EPSL due to the complexity of administering the caps. Per statutory requirement, any EPSL granted to employees was in addition to any existing leave balances, including Advanced Sick Leave.

**Health Care Providers and Emergency Responders COVID-19 Leave**

County employees who are health care providers and emergency responders, as those terms are defined by the Department of Labor and any relevant regulations, may be allowed to use 40 hours of EPSL sick leave at their regular rate of pay, under the terms and conditions that other County employees receive EPSL, except that use of such leave is subject to Department Head approval to ensure that critical health and public safety needs are met.

**Additional Emergency Leave Recommendations**

New employees shall be eligible to use EPSL leave and/or Advanced Sick Leave under the terms and conditions that other County employees receive EPSL and Advanced Sick Leave.

For all employees, the ability to use EPSL is in addition to any existing leave balances, including Advanced Sick Leave. These leave hours have no cash value and unused balances of these hours shall not be paid out upon separation.

Use of EPSL balances may be retroactively applied from December 31, 2021 through January 11, 2022.

Board approval is requested to allow the County Executive Officer to authorize 40 additional hours (to a maximum of 80 hours) and the authority to extend the administration of this program through June 30, 2022 in a manner consistent with the Board of Supervisors-approved parameters, if warranted by the continued impact of the COVID pandemic. Additionally, Board authority is requested to allow the County Executive Officer discretion to administer future state and/or federal statutorily required leave programs, if any, in a manner consistent with the parameters approved for the implementation of the FFCRA.

The County will continue to encourage telecommuting instead of the use of leave balances for employees with each department determining the feasibility of employee telecommuting while ensuring vital services continue to be provided.

**FINANCIAL IMPACT:**

The financial impact is unknown at this time as Human Resources cannot forecast the number of employees who may utilize the benefit. The use of this Emergency Leave time will be paid by each department. Funding would be eligible from the Board approved allocation of American Rescue Plan Act funding for Employee Paid Sick Leave.

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

Attachment A – Response to COVID-19 Related School Closures dated March 13, 2020

Attachment B – H.R. 6201 (Families First Coronavirus Response Act)

Attachment C – Senate Bill 95 (COVID-19 Supplemental Paid Sick Leave)



*County Executive Office*  
**Memorandum**

---

March 13, 2020

To: Orange County Employees

From: Frank Kim, County Executive Officer

A handwritten signature in blue ink, appearing to read "Frank Kim".

Subject: **Response to COVID-19 Related School Closures**

---

We understand this may be a difficult time, and in response we are implementing this emergency procedure to aid our County family in dealing with the ever-evolving COVID-19 pandemic.

Effective Monday, March 16, 2020 through March 31, 2020, the following procedure shall apply to employees with children that attend a school closed due to COVID-19, but may not apply to employees essential to public health and safety as determined by each department:

1. Impacted employees may telecommute if doing so is deemed feasible and approved by their supervisor or manager.
2. Impacted employees who are not able to telecommute may use sick leave or elect to use any other leave available to them (e.g., annual leave, comp time, etc.).
3. Impacted employees who have exhausted all leave balances shall be advanced up to 80 hours of sick leave/healthcare leave.
4. Impacted extra help employees may use any accrued sick leave hours and may also be advanced an additional 3 days of sick leave.
5. Impacted employees should follow their department's normal call-in guidelines.

These guidelines may be extended if necessary.

We are monitoring and evaluating the situation and will communicate additional information to employees as developments arise. The Board of Supervisors and the County Executive Office thank you for your continued service, dedication and patience.



H. R. 6201

One Hundred Sixteenth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Friday,  
the third day of January, two thousand and twenty*

An Act

Making emergency supplemental appropriations for the fiscal year ending September 30, 2020, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Families First Coronavirus Response Act”.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents is as follows:

DIVISION A—SECOND CORONAVIRUS PREPAREDNESS AND RESPONSE  
SUPPLEMENTAL APPROPRIATIONS ACT, 2020

DIVISION B—NUTRITION WAIVERS

DIVISION C—EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

DIVISION D—EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION  
AND ACCESS ACT OF 2020

DIVISION E—EMERGENCY PAID SICK LEAVE ACT

DIVISION F—HEALTH PROVISIONS

DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND  
MEDICAL LEAVE

DIVISION H—BUDGETARY EFFECTS

**SEC. 3. REFERENCES.**

Except as expressly provided otherwise, any reference to “this Act” contained in any division of this Act shall be treated as referring only to the provisions of that division.

**DIVISION A—SECOND CORONAVIRUS PREPAREDNESS  
AND RESPONSE SUPPLEMENTAL APPROPRIATIONS  
ACT, 2020**

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2020, and for other purposes, namely:

H. R. 6201—2

## TITLE I

## DEPARTMENT OF AGRICULTURE

## FOOD AND NUTRITION SERVICE

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS,  
AND CHILDREN (WIC)

For an additional amount for the “Special Supplemental Nutrition Program for Women, Infants, and Children”, \$500,000,000, to remain available through September 30, 2021: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## COMMODITY ASSISTANCE PROGRAM

For an additional amount for the “Commodity Assistance Program” for the emergency food assistance program as authorized by section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and section 204(a)(1) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 7508(a)(1)), \$400,000,000, to remain available through September 30, 2021: *Provided*, That of the funds made available, the Secretary may use up to \$100,000,000 for costs associated with the distribution of commodities: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## GENERAL PROVISIONS—THIS TITLE

SEC. 1101. (a) PUBLIC HEALTH EMERGENCY.—During fiscal year 2020, in any case in which a school is closed for at least 5 consecutive days during a public health emergency designation during which the school would otherwise be in session, each household containing at least 1 member who is an eligible child attending the school shall be eligible to receive assistance pursuant to a state agency plan approved under subsection (b).

(b) ASSISTANCE.—To carry out this section, the Secretary of Agriculture may approve State agency plans for temporary emergency standards of eligibility and levels of benefits under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) for households with eligible children. Plans approved by the Secretary shall provide for supplemental allotments to households receiving benefits under such Act, and issuances to households not already receiving benefits. Such level of benefits shall be determined by the Secretary in an amount not less than the value of meals at the free rate over the course of 5 school days for each eligible child in the household.

(c) MINIMUM CLOSURE REQUIREMENT.—The Secretary of Agriculture shall not provide assistance under this section in the case of a school that is closed for less than 5 consecutive days.

(d) USE OF EBT SYSTEM.—A State agency may provide assistance under this section through the EBT card system established under section 7 of the Food and Nutrition Act of 2008 (7 U.S.C. 2016).

(e) RELEASE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary of Agriculture may authorize State

## H. R. 6201—3

educational agencies and school food authorities administering a school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to release to appropriate officials administering the supplemental nutrition assistance program such information as may be necessary to carry out this section.

(f) **WAIVERS.**—To facilitate implementation of this section, the Secretary of Agriculture may approve waivers of the limits on certification periods otherwise applicable under section 3(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(f)), reporting requirements otherwise applicable under section 6(c) of such Act (7 U.S.C. 2015(c)), and other administrative requirements otherwise applicable to State agencies under such Act.

(g) **AVAILABILITY OF COMMODITIES.**—During fiscal year 2020, the Secretary of Agriculture may purchase commodities for emergency distribution in any area of the United States during a public health emergency designation.

(h) **DEFINITIONS.**—In this section:

(1) The term “eligible child” means a child (as defined in section 12(d) or served under section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d), 1759(a)(1)) who, if not for the closure of the school attended by the child during a public health emergency designation and due to concerns about a COVID–19 outbreak, would receive free or reduced price school meals under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) at the school.

(2) The term “public health emergency designation” means the declaration of a public health emergency, based on an outbreak of SARS–CoV–2 or another coronavirus with pandemic potential, by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d).

(3) The term “school” has the meaning given the term in section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)).

(i) **FUNDING.**—There are hereby appropriated to the Secretary of Agriculture such amounts as are necessary to carry out this section: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

**SEC. 1102.** In addition to amounts otherwise made available, \$100,000,000, to remain available through September 30, 2021, shall be available for the Secretary of Agriculture to provide grants to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance in response to a COVID–19 public health emergency: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

H. R. 6201—4

TITLE II

DEPARTMENT OF DEFENSE

DEFENSE HEALTH PROGRAM

For an additional amount for “Defense Health Program”, \$82,000,000, to remain available until September 30, 2022, for health services consisting of SARS-CoV-2 or COVID-19 related items and services as described in section 6006(a) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE III

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TAXPAYER SERVICES

For an additional amount for “Taxpayer Services”, \$15,000,000, to remain available until September 30, 2022, for the purposes of carrying out the Families First Coronavirus Response Act: *Provided*, That amounts provided under this heading in this Act may be transferred to and merged with “Operations Support”: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE IV

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For an additional amount for “Indian Health Services”, \$64,000,000, to remain available until September 30, 2022, for health services consisting of SARS-CoV-2 or COVID-19 related items and services as described in section 6007 of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amounts shall be allocated at the discretion of the Director of the Indian Health Service: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.



H. R. 6201—5

## TITLE V

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## ADMINISTRATION FOR COMMUNITY LIVING

## AGING AND DISABILITY SERVICES PROGRAMS

For an additional amount for “Aging and Disability Services Programs”, \$250,000,000, to remain available until September 30, 2021, for activities authorized under subparts 1 and 2 of part C, of title III, and under title VI, of the Older Americans Act of 1965 (“OAA”), of which \$160,000,000 shall be for Home-Delivered Nutrition Services, \$80,000,000 shall be for Congregate Nutrition Services, and \$10,000,000 shall be for Nutrition Services for Native Americans: *Provided*, That State matching requirements under sections 304(d)(1)(D) and 309(b)(2) of the OAA shall not apply to funds made available under this heading in this Act: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## OFFICE OF THE SECRETARY

## PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For an additional amount for “Public Health and Social Services Emergency Fund”, \$1,000,000,000, to remain available until expended, for activities authorized under section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11), in coordination with the Assistant Secretary for Preparedness and Response and the Administrator of the Centers for Medicare & Medicaid Services, to pay the claims of providers for reimbursement, as described in subsection (a)(3)(D) of such section 2812, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in paragraph (1) of section 6001(a) of division F of the Families First Coronavirus Response Act (or the administration of such products) or visits described in paragraph (2) of such section for uninsured individuals: *Provided*, That the term “uninsured individual” in this paragraph means an individual who is not enrolled in—

(1) a Federal health care program (as defined under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)), including an individual who is eligible for medical assistance only because of subsection (a)(10)(A)(ii)(XXIII) of Section 1902 of the Social Security Act; or

(2) a group health plan or health insurance coverage offered by a health insurance issuer in the group or individual market (as such terms are defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91)), or a health plan offered under chapter 89 of title 5, United States Code:

*Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## H. R. 6201—6

## TITLE VI

## DEPARTMENT OF VETERANS AFFAIRS

## VETERANS HEALTH ADMINISTRATION

## MEDICAL SERVICES

For an additional amount for “Medical Services”, \$30,000,000, to remain available until September 30, 2022, for health services consisting of SARS-CoV-2 or COVID-19 related items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## MEDICAL COMMUNITY CARE

For an additional amount for “Medical Community Care”, \$30,000,000, to remain available until September 30, 2022, for health services consisting of SARS-CoV-2 or COVID-19 related items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

## TITLE VII

## GENERAL PROVISIONS—THIS ACT

SEC. 1701. Not later than 30 days after the date of enactment of this Act, the head of each executive agency that receives funding in this Act shall provide a report detailing the anticipated uses of all such funding to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That each report shall include estimated personnel and administrative costs, as well as the total amount of funding apportioned, allotted, obligated, and expended, to date: *Provided further*, That each such plan shall be updated and submitted to such Committees every 60 days until all funds are expended or expire.

SEC. 1702. States and local governments receiving funds or assistance pursuant to this division shall ensure the respective State Emergency Operations Center receives regular and real-time reporting on aggregated data on testing and results from State and local public health departments, as determined by the Director of the Centers for Disease Control and Prevention, and that such data is transmitted to the Centers for Disease Control and Prevention.

SEC. 1703. Each amount appropriated or made available by this Act is in addition to amounts otherwise appropriated for the fiscal year involved.

SEC. 1704. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

## H. R. 6201—7

SEC. 1705. Unless otherwise provided for by this Act, the additional amounts appropriated by this Act to appropriations accounts shall be available under the authorities and conditions applicable to such appropriations accounts for fiscal year 2020.

SEC. 1706. Each amount designated in this Act by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

SEC. 1707. Any amount appropriated by this Act, designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 and subsequently so designated by the President, and transferred pursuant to transfer authorities provided by this Act shall retain such designation.

This division may be cited as the “Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020”.

**DIVISION B—NUTRITION WAIVERS****TITLE I—MAINTAINING ESSENTIAL ACCESS TO LUNCH FOR STUDENTS ACT****SEC. 2101. SHORT TITLE.**

This title may be cited as the “Maintaining Essential Access to Lunch for Students Act” or the “MEALS Act”.

**SEC. 2102. WAIVER EXCEPTION FOR SCHOOL CLOSURES DUE TO COVID-19.**

(a) **IN GENERAL.**—The requirements under section 12(l)(1)(A)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)(1)(A)(iii)) shall not apply to a qualified COVID-19 waiver.

(b) **ALLOWABLE INCREASE IN FEDERAL COSTS.**—Notwithstanding paragraph (4) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), the Secretary of Agriculture may grant a qualified COVID-19 waiver that increases Federal costs.

(c) **TERMINATION AFTER PERIODIC REVIEW.**—The requirements under section 12(l)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)(5)) shall not apply to a qualified COVID-19 waiver.

(d) **QUALIFIED COVID-19 WAIVER.**—In this section, the term “qualified COVID-19 waiver” means a waiver—

(1) requested by a State (as defined in section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8))) or eligible service provider under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)); and

(2) to waive any requirement under such Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either such Act, for purposes of providing meals and meal supplements under such Acts during a school closure due to COVID-19.

H. R. 6201—8

**TITLE II—COVID—19 CHILD NUTRITION  
RESPONSE ACT**

**SEC. 2201. SHORT TITLE.**

This title may be cited as the “COVID–19 Child Nutrition Response Act”.

**SEC. 2202. NATIONAL SCHOOL LUNCH PROGRAM REQUIREMENT WAIVERS ADDRESSING COVID–19.****(a) NATIONWIDE WAIVER.—**

(1) **IN GENERAL.**—Notwithstanding any other provision of law, the Secretary may establish a waiver for all States under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), for purposes of—

(A) providing meals and meal supplements under a qualified program; and

(B) carrying out subparagraph (A) with appropriate safety measures with respect to COVID–19, as determined by the Secretary.

(2) **STATE ELECTION.**—A waiver established under paragraph (1) shall—

(A) notwithstanding paragraph (2) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), apply automatically to any State that elects to be subject to the waiver without further application; and

(B) not be subject to the requirements under paragraph (3) of such section.

(b) **CHILD AND ADULT CARE FOOD PROGRAM WAIVER.**—Notwithstanding any other provision of law, the Secretary may grant a waiver under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) to allow non-congregate feeding under a child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) if such waiver is for the purposes of—

(1) providing meals and meal supplements under such child and adult care food program; and

(2) carrying out paragraph (1) with appropriate safety measures with respect to COVID–19, as determined by the Secretary.

(c) **MEAL PATTERN WAIVER.**—Notwithstanding paragraph (4)(A) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) the Secretary may grant a waiver under such section that relates to the nutritional content of meals served if the Secretary determines that—

(1) such waiver is necessary to provide meals and meal supplements under a qualified program; and

(2) there is a supply chain disruption with respect to foods served under such a qualified program and such disruption is due to COVID–19.

(d) **REPORTS.**—Each State that receives a waiver under subsection (a), (b), or (c), shall, not later than 1 year after the date such State received such waiver, submit a report to the Secretary that includes the following:

(1) A summary of the use of such waiver by the State and eligible service providers.

## H. R. 6201—9

(2) A description of whether such waiver resulted in improved services to children.

(e) SUNSET.—The authority of the Secretary to establish or grant a waiver under this section shall expire on September 30, 2020.

(f) DEFINITIONS.—In this section:

(1) QUALIFIED PROGRAM.—The term “qualified program” means the following:

(A) The school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) The school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(C) The child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

(D) The summer food service program for children under section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761).

(2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(3) STATE.—The term “State” has the meaning given such term in section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8)).

**SEC. 2203. PHYSICAL PRESENCE WAIVER UNDER WIC DURING CERTAIN PUBLIC HEALTH EMERGENCIES.**

(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may grant a request described in paragraph

(2) to—

(A) waive the requirement under section 17(d)(3)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)(i)); and

(B) defer anthropometric and bloodwork requirements necessary to determine nutritional risk.

(2) REQUEST.—A request described in this paragraph is a request made to the Secretary by a State agency to waive, on behalf of the local agencies served by such State agency, the requirements described in paragraph (1) during any portion of the emergency period (as defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) (beginning on or after the date of the enactment of this section).

(b) REPORTS.—

(1) LOCAL AGENCY REPORTS.—Each local agency that uses a waiver pursuant to subsection (a) shall, not later than 1 year after the date such local agency uses such waiver, submit a report to the State agency serving such local agency that includes the following:

(A) A summary of the use of such waiver by the local agency.

(B) A description of whether such waiver resulted in improved services to women, infants, and children.

(2) STATE AGENCY REPORTS.—Each State agency that receives a waiver under subsection (a) shall, not later than 18 months after the date such State agency received such

## H. R. 6201—10

waiver, submit a report to the Secretary that includes the following:

- (A) A summary of the reports received by the State agency under paragraph (1).
- (B) A description of whether such waiver resulted in improved services to women, infants, and children.
- (c) SUNSET.—The authority under this section shall expire on September 30, 2020.
- (d) DEFINITIONS.—In this section:
  - (1) LOCAL AGENCY.—The term “local agency” has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).
  - (2) NUTRITIONAL RISK.—The term “nutritional risk” has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).
  - (3) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.
  - (4) STATE AGENCY.— The term “State agency” has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

**SEC. 2204. ADMINISTRATIVE REQUIREMENTS WAIVER UNDER WIC.**

- (a) WAIVER AUTHORITY.—
  - (1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Agriculture may, if requested by a State agency (as defined in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), modify or waive any qualified administrative requirement with respect to such State agency.
  - (2) QUALIFIED ADMINISTRATIVE REQUIREMENT.—In this section, the term “qualified administrative requirement” means a regulatory requirement issued under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) that the Secretary of Agriculture determines—
    - (A) cannot be met by a State agency due to COVID-19; and
    - (B) the modification or waiver of which is necessary to provide assistance under such section.
- (b) STATE AGENCY REPORTS.—Each State agency that receives a waiver under subsection (a)(1) shall, not later than 1 year after the date such State agency received such waiver, submit a report to the Secretary of Agriculture that includes the following:
  - (1) A summary of the use of such waiver by the State agency.
  - (2) A description of whether such waiver resulted in improved services to women, infants, and children.
- (c) SUNSET.—The authority under this section shall expire on September 30, 2020.

**TITLE III—SNAP WAIVERS****SEC. 2301. SNAP FLEXIBILITY FOR LOW-INCOME JOBLESS WORKERS.**

- (a) Beginning with the first month that begins after the enactment of this Act and for each subsequent month through the end of the month subsequent to the month a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak

## H. R. 6201—11

of coronavirus disease 2019 (COVID-19) is lifted, eligibility for supplemental nutrition assistance program benefits shall not be limited under section 6(o)(2) of the Food and Nutrition Act of 2008 unless an individual does not comply with the requirements of a program offered by the State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that meets the standards of subparagraphs (B) or (C) of such section 6(o)(2).

(b) Beginning on the month subsequent to the month the public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of COVID-19 is lifted for purposes of section 6(o) of the Food and Nutrition Act of 2008, such State agency shall disregard any period during which an individual received benefits under the supplemental nutrition assistance program prior to such month.

**SEC. 2302. ADDITIONAL SNAP FLEXIBILITIES IN A PUBLIC HEALTH EMERGENCY.**

(a) In the event of a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID-19) and the issuance of an emergency or disaster declaration by a State based on an outbreak of COVID-19, the Secretary of Agriculture—

(1) shall provide, at the request of a State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that provides sufficient data (as determined by the Secretary through guidance) supporting such request, for emergency allotments to households participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 to address temporary food needs not greater than the applicable maximum monthly allotment for the household size; and

(2) may adjust, at the request of State agencies or by guidance in consultation with one or more State agencies, issuance methods and application and reporting requirements under the Food and Nutrition Act of 2008 to be consistent with what is practicable under actual conditions in affected areas. (In making this adjustment, the Secretary shall consider the availability of offices and personnel in State agencies, any conditions that make reliance on electronic benefit transfer systems described in section 7(h) of the Food and Nutrition Act of 2008 impracticable, any disruptions of transportation and communication facilities, and any health considerations that warrant alternative approaches.)

(b) Not later than 10 days after the date of the receipt or issuance of each document listed in paragraphs (1), (2), or (3) of this subsection, the Secretary of Agriculture shall make publicly available on the website of the Department the following documents:

- (1) Any request submitted by State agencies under subsection (a).
- (2) The Secretary's approval or denial of each such request.
- (3) Any guidance issued under subsection (a)(2).

(c) The Secretary of Agriculture shall, within 18 months after the public health emergency declaration described in subsection (a) is lifted, submit a report to the House and Senate Agriculture Committees with a description of the measures taken to address

H. R. 6201—12

the food security needs of affected populations during the emergency, any information or data supporting State agency requests, any additional measures that States requested that were not approved, and recommendations for changes to the Secretary's authority under the Food and Nutrition Act of 2008 to assist the Secretary and States and localities in preparations for any future health emergencies.

### **DIVISION C—EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

#### **SEC. 3101. SHORT TITLE.**

This Act may be cited as “Emergency Family and Medical Leave Expansion Act”.

#### **SEC. 3102. AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.**

##### **(a) PUBLIC HEALTH EMERGENCY LEAVE.—**

(1) **IN GENERAL.**—Section 102(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) is amended by adding at the end the following:

“(F) During the period beginning on the date the Emergency Family and Medical Leave Expansion Act takes effect, and ending on December 31, 2020, because of a qualifying need related to a public health emergency in accordance with section 110.”.

(2) **PAID LEAVE REQUIREMENT.**—Section 102(c) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(c)) is amended by striking “under subsection (a)” and inserting “under subsection (a) (other than certain periods of leave under subsection (a)(1)(F))”.

(b) **REQUIREMENTS.**—Title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.) is amended by adding at the end the following:

##### **“SEC. 110. PUBLIC HEALTH EMERGENCY LEAVE.**

“(a) **DEFINITIONS.**—The following shall apply with respect to leave under section 102(a)(1)(F):

“(1) **APPLICATION OF CERTAIN TERMS.**—The definitions in section 101 shall apply, except as follows:

“(A) **ELIGIBLE EMPLOYEE.**—In lieu of the definition in sections 101(2)(A) and 101(2)(B)(ii), the term ‘eligible employee’ means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under section 102(a)(1)(F).

“(B) **EMPLOYER THRESHOLD.**—Section 101(4)(A)(i) shall be applied by substituting ‘fewer than 500 employees’ for ‘50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year’.

“(2) **ADDITIONAL DEFINITIONS.**—In addition to the definitions described in paragraph (1), the following definitions shall apply with respect to leave under section 102(a)(1)(F):

“(A) **QUALIFYING NEED RELATED TO A PUBLIC HEALTH EMERGENCY.**—The term ‘qualifying need related to a public health emergency’, with respect to leave, means the



## H. R. 6201—13

employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

“(B) PUBLIC HEALTH EMERGENCY.—The term ‘public health emergency’ means an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

“(C) CHILD CARE PROVIDER.—The term ‘child care provider’ means a provider who receives compensation for providing child care services on a regular basis, including an ‘eligible child care provider’ (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n)).

“(D) SCHOOL.—The term ‘school’ means an ‘elementary school’ or ‘secondary school’ as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

“(3) REGULATORY AUTHORITIES.—The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

“(A) to exclude certain health care providers and emergency responders from the definition of eligible employee under section 110(a)(1)(A); and

“(B) to exempt small businesses with fewer than 50 employees from the requirements of section 102(a)(1)(F) when the imposition of such requirements would jeopardize the viability of the business as a going concern.

“(b) RELATIONSHIP TO PAID LEAVE.—

“(1) UNPAID LEAVE FOR INITIAL 10 DAYS.—

“(A) IN GENERAL.—The first 10 days for which an employee takes leave under section 102(a)(1)(F) may consist of unpaid leave.

“(B) EMPLOYEE ELECTION.—An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave under section 102(a)(1)(F) in accordance with section 102(d)(2)(B).

“(2) PAID LEAVE FOR SUBSEQUENT DAYS.—

“(A) IN GENERAL.—An employer shall provide paid leave for each day of leave under section 102(a)(1)(F) that an employee takes after taking leave under such section for 10 days.

“(B) CALCULATION.—

“(i) IN GENERAL.—Subject to clause (ii), paid leave under subparagraph (A) for an employee shall be calculated based on—

“(I) an amount that is not less than two-thirds of an employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)); and

“(II) the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)).

## H. R. 6201—14

“(ii) CLARIFICATION.—In no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.

“(C) VARYING SCHEDULE HOURS CALCULATION.—In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave under section 102(a)(1)(F), the employer shall use the following in place of such number:

“(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type.

“(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

“(c) NOTICE.—In any case where the necessity for leave under section 102(a)(1)(F) for the purpose described in subsection (a)(2)(A)(iii) is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.

“(d) RESTORATION TO POSITION.—

“(1) IN GENERAL.—Section 104(a)(1) shall not apply with respect to an employee of an employer who employs fewer than 25 employees if the conditions described in paragraph (2) are met.

“(2) CONDITIONS.—The conditions described in this paragraph are the following:

“(A) The employee takes leave under section 102(a)(1)(F).

“(B) The position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer—

“(i) that affect employment; and

“(ii) are caused by a public health emergency during the period of leave.

“(C) The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

“(D) If the reasonable efforts of the employer under subparagraph (C) fail, the employer makes reasonable efforts during the period described in paragraph (3) to contact the employee if an equivalent position described in subparagraph (C) becomes available.

“(3) CONTACT PERIOD.—The period described under this paragraph is the 1-year period beginning on the earlier of—

“(A) the date on which the qualifying need related to a public health emergency concludes; or

“(B) the date that is 12 weeks after the date on which the employee's leave under section 102(a)(1)(F) commences.”

## H. R. 6201—15

**SEC. 3103. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.**

(a) **EMPLOYERS.**—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under section 110(b)(2) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act, by making contributions to a multiemployer fund, plan, or program based on the paid leave each of its employees is entitled to under such section while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

(b) **EMPLOYEES.**—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

**SEC. 3104. SPECIAL RULE FOR CERTAIN EMPLOYERS.**

An employer under 110(a)(B) shall not be subject to section 107(a) for a violation of section 102(a)(1)(F) if the employer does not meet the definition of employer set forth in Section 101(4)(A)(i).

**SEC. 3105. SPECIAL RULE FOR HEALTH CARE PROVIDERS AND EMERGENCY RESPONDERS.**

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of section 3102 of this Act.

**SEC. 3106. EFFECTIVE DATE.**

This Act shall take effect not later than 15 days after the date of enactment of this Act.

## **DIVISION D—EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020**

**SEC. 4101. SHORT TITLE.**

This division may be cited as the “Emergency Unemployment Insurance Stabilization and Access Act of 2020”.

**SEC. 4102. EMERGENCY TRANSFERS FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION.**

(a) **IN GENERAL.**—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

## H. R. 6201—16

## “Emergency Transfers in Fiscal Year 2020 for Administration

“(h)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of emergency administration grants in fiscal year 2020 to the accounts of the States in the Unemployment Trust Fund, in accordance with succeeding provisions of this subsection.

“(B) The amount of an emergency administration grant with respect to a State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying \$1,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State’s share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2019, under the provisions of subsection (a).

“(C) Of the emergency administration grant determined under subparagraph (B) with respect to a State—

“(i) not later than 60 days after the date of enactment of this subsection, 50 percent shall be transferred to the account of such State upon a certification by the Secretary of Labor to the Secretary of the Treasury that the State meets the requirements of paragraph (2); and

“(ii) only with respect to a State in which the number of unemployment compensation claims has increased by at least 10 percent over the same quarter in the previous calendar year, the remainder shall be transferred to the account of such State upon a certification by the Secretary of Labor to the Secretary of the Treasury that the State meets the requirements of paragraph (3).

“(2) The requirements of this paragraph with respect to a State are the following:

“(A) The State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor.

“(B) The State ensures that applications for unemployment compensation, and assistance with the application process, are accessible in at least two of the following: in-person, by phone, or online.

“(C) The State notifies applicants when an application is received and is being processed, and in any case in which an application is unable to be processed, provides information about steps the applicant can take to ensure the successful processing of the application.

“(3) The requirements of this paragraph with respect to a State are the following:

“(A) The State has expressed its commitment to maintain and strengthen access to the unemployment compensation system, including through initial and continued claims.

“(B) The State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

## H. R. 6201—17

“(4) Any amount transferred to the account of a State under this subsection may be used by such State only for the administration of its unemployment compensation law, including by taking such steps as may be necessary to ensure adequate resources in periods of high demand.

“(5) Not later than 1 year after the date of enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020, each State receiving emergency administration grant funding under paragraph (1)(C)(i) shall submit to the Secretary of Labor, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, a report that includes—

“(A) an analysis of the reciprocity rate for unemployment compensation in the State as such rate has changed over time;

“(B) a description of steps the State intends to take to increase such reciprocity rate.

“(6)(A) Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of making the transfers described in paragraph (1)(C).

“(B) There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.”

(b) EMERGENCY FLEXIBILITY.—Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID-19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law.

(c) REGULATIONS.—The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

**SEC. 4103. TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.**

Section 1202(b)(10)(A) of the Social Security Act (42 U.S.C. 1322(b)(10)(A)) is amended by striking “beginning on the date of enactment of this paragraph and ending on December 31, 2010” and inserting “beginning on the date of enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 and ending on December 31, 2020”.

**SEC. 4104. TECHNICAL ASSISTANCE AND GUIDANCE FOR SHORT-TIME COMPENSATION PROGRAMS.**

The Secretary of Labor shall assist States in establishing, implementing, and improving the employer awareness of short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986) to help avert layoffs, including by providing technical assistance and guidance.

## H. R. 6201—18

**SEC. 4105. FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD.**

(a) **IN GENERAL.**—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section and before December 31, 2020 (and only with respect to States that receive emergency administration grant funding under clauses (i) and (ii) of section 903(h)(1)(C) of the Social Security Act (42 U.S.C. 1102(h)(1)(C))), section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall be applied by substituting “100 percent of” for “one-half of”.

(b) **TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.**—With respect to weeks of unemployment beginning after the date of the enactment of this Act and ending on or before December 31, 2020, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall not apply.

(c) **DEFINITIONS.**—For purposes of this section—

(1) the terms “sharable extended compensation” and “sharable regular compensation” have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) the term “week” has the meaning given such term under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(d) **REGULATIONS.**—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section.

## **DIVISION E—EMERGENCY PAID SICK LEAVE ACT**

**SEC. 5101. SHORT TITLE.**

This Act may be cited as the “Emergency Paid Sick Leave Act”.

**SEC. 5102. PAID SICK TIME REQUIREMENT.**

(a) **IN GENERAL.**—An employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter

## H. R. 6201—19

has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

## (b) DURATION OF PAID SICK TIME.—

(1) IN GENERAL.—An employee shall be entitled to paid sick time for an amount of hours determined under paragraph (2).

(2) AMOUNT OF HOURS.—The amount of hours of paid sick time to which an employee is entitled shall be as follows:

(A) For full-time employees, 80 hours.

(B) For part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.

(3) CARRYOVER.—Paid sick time under this section shall not carry over from 1 year to the next.

(c) EMPLOYER'S TERMINATION OF PAID SICK TIME.—Paid sick time provided to an employee under this Act shall cease beginning with the employee's next scheduled workshift immediately following the termination of the need for paid sick time under subsection (a).

(d) PROHIBITION.—An employer may not require, as a condition of providing paid sick time under this Act, that the employee involved search for or find a replacement employee to cover the hours during which the employee is using paid sick time.

## (e) USE OF PAID SICK TIME.—

(1) IN GENERAL.—The paid sick time under subsection (a) shall be available for immediate use by the employee for the purposes described in such subsection, regardless of how long the employee has been employed by an employer.

## (2) SEQUENCING.—

(A) IN GENERAL.—An employee may first use the paid sick time under subsection (a) for the purposes described in such subsection.

(B) PROHIBITION.—An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under subsection (a).

**SEC. 5103. NOTICE.**

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act.

(b) MODEL NOTICE.—Not later than 7 days after the date of enactment of this Act, the Secretary of Labor shall make publicly available a model of a notice that meets the requirements of subsection (a).

**SEC. 5104. PROHIBITED ACTS.**

It shall be unlawful for any employer to discharge, discipline, or in any other manner discriminate against any employee who—

H. R. 6201—20

- (1) takes leave in accordance with this Act; and
- (2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.

**SEC. 5105. ENFORCEMENT.**

(a) **UNPAID SICK LEAVE.**—An employer who violates section 5102 shall—

- (1) be considered to have failed to pay minimum wages in violation of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206); and
- (2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

(b) **UNLAWFUL TERMINATION.**—An employer who willfully violates section 5104 shall—

- (1) be considered to be in violation of section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)); and
- (2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

**SEC. 5106. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.**

(a) **EMPLOYERS.**—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under this Act by making contributions to a multiemployer fund, plan, or program based on the hours of paid sick time each of its employees is entitled to under this Act while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the uses specified under section 5102(a).

(b) **EMPLOYEES.**—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for the uses specified in section 5102(a).

**SEC. 5107. RULES OF CONSTRUCTION.**

Nothing in this Act shall be construed—

- (1) to in any way diminish the rights or benefits that an employee is entitled to under any—
  - (A) other Federal, State, or local law;
  - (B) collective bargaining agreement; or
  - (C) existing employer policy; or
- (2) to require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for paid sick time under this Act that has not been used by such employee.



## H. R. 6201—21

**SEC. 5108. EFFECTIVE DATE.**

This Act, and the requirements under this Act, shall take effect not later than 15 days after the date of enactment of this Act.

**SEC. 5109. SUNSET.**

This Act, and the requirements under this Act, shall expire on December 31, 2020.

**SEC. 5110. DEFINITIONS.**

For purposes of the Act:

(1) **EMPLOYEE.**—The terms “employee” means an individual who is—

(A)(i) an employee, as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), who is not covered under subparagraph (E) or (F), including such an employee of the Library of Congress, except that a reference in such section to an employer shall be considered to be a reference to an employer described in clauses (i)(I) and (ii) of paragraph (5)(A); or

(ii) an employee of the Government Accountability Office;

(B) a State employee described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(C) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), other than an applicant for employment;

(D) a covered employee, as defined in section 411(c) of title 3, United States Code;

(E) a Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code; or

(F) any other individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code).

(2) **EMPLOYER.**—

(A) **IN GENERAL.**—The term “employer” means a person who is—

(i)(I) a covered employer, as defined in subparagraph (B), who is not covered under subclause (V);

(II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(IV) an employing office, as defined in section 411(c) of title 3, United States Code; or

(V) an Executive Agency as defined in section 105 of title 5, United States Code, and including the U.S. Postal Service and the Postal Regulatory Commission; and

(ii) engaged in commerce (including government), or an industry or activity affecting commerce (including government), as defined in subparagraph (B)(iii).

(B) **COVERED EMPLOYER.**—

## H. R. 6201—22

(i) IN GENERAL.—In subparagraph (A)(i)(I), the term “covered employer”—

(I) means any person engaged in commerce or in any industry or activity affecting commerce that—

(aa) in the case of a private entity or individual, employs fewer than 500 employees; and

(bb) in the case of a public agency or any other entity that is not a private entity or individual, employs 1 or more employees;

(II) includes—

(aa) includes any person acting directly or indirectly in the interest of an employer in relation to an employee (within the meaning of such phrase in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)); and

(bb) any successor in interest of an employer;

(III) includes any “public agency”, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)); and

(IV) includes the Government Accountability Office and the Library of Congress.

(ii) PUBLIC AGENCY.—For purposes of clause (i)(IV), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(iii) DEFINITIONS.—For purposes of this subparagraph:

(I) COMMERCE.—The terms “commerce” and “industry or activity affecting commerce” means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act of 1947 (29 U.S.C. 142 (1) and (3)).

(II) EMPLOYEE.—The term “employee” has the same meaning given such term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(III) PERSON.—The term “person” has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(3) FLSA TERMS.—The terms “employ” and “State” have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(4) FMLA TERMS.—The terms “health care provider” and “son or daughter” have the meanings given such terms in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(5) PAID SICK TIME.—

(A) IN GENERAL.—The term “paid sick time” means an increment of compensated leave that—

## H. R. 6201—23

(i) is provided by an employer for use during an absence from employment for a reason described in any paragraph of section 2(a); and

(ii) is calculated based on the employee's required compensation under subparagraph (B) and the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)), except that in no event shall such paid sick time exceed—

(I) \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of section 5102(a); and

(II) \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

**(B) REQUIRED COMPENSATION.—**

(i) **IN GENERAL.**—Subject to subparagraph (A)(ii), the employee's required compensation under this subparagraph shall be not less than the greater of the following:

(I) The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).

(II) The minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(III) The minimum wage rate in effect for such employee in the applicable State or locality, whichever is greater, in which the employee is employed.

(ii) **SPECIAL RULE FOR CARE OF FAMILY MEMBERS.**—Subject to subparagraph (A)(ii), with respect to any paid sick time provided for any use described in paragraph (4), (5), or (6) of section 5102(a), the employee's required compensation under this subparagraph shall be two-thirds of the amount described in clause (B)(i).

(C) **VARYING SCHEDULE HOURS CALCULATION.**—In the case of a part-time employee described in section 5102(b)(2)(B) whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken paid sick time under section 2(a), the employer shall use the following in place of such number:

(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type.

(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

(D) **GUIDELINES.**—Not later than 15 days after the date of the enactment of this Act, the Secretary of Labor

## H. R. 6201—24

shall issue guidelines to assist employers in calculating the amount of paid sick time under subparagraph (A).

(E) REASONABLE NOTICE.—After the first workday (or portion thereof) an employee receives paid sick time under this Act, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.

**SEC. 5111. REGULATORY AUTHORITIES.**

The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

(1) to exclude certain health care providers and emergency responders from the definition of employee under section 5110(1) including by allowing the employer of such health care providers and emergency responders to opt out;

(2) to exempt small businesses with fewer than 50 employees from the requirements of section 5102(a)(5) when the imposition of such requirements would jeopardize the viability of the business as a going concern; and

(3) as necessary, to carry out the purposes of this Act, including to ensure consistency between this Act and Division C and Division G of the Families First Coronavirus Response Act.

**DIVISION F—HEALTH PROVISIONS****SEC. 6001. COVERAGE OF TESTING FOR COVID-19.**

(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan (as defined in section 1251(e) of the Patient Protection and Affordable Care Act)) shall provide coverage, and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, for the following items and services furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act:

(1) In vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products.

(2) Items and services furnished to an individual during health care provider office visits (which term in this paragraph includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product described in paragraph (1), but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for such product.

## H. R. 6201—25

(b) **ENFORCEMENT.**—The provisions of subsection (a) shall be applied by the Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury to group health plans and health insurance issuers offering group or individual health insurance coverage as if included in the provisions of part A of title XXVII of the Public Health Service Act, part 7 of the Employee Retirement Income Security Act of 1974, and subchapter B of chapter 100 of the Internal Revenue Code of 1986, as applicable.

(c) **IMPLEMENTATION.**—The Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury may implement the provisions of this section through sub-regulatory guidance, program instruction or otherwise.

(d) **TERMS.**—The terms “group health plan”; “health insurance issuer”; “group health insurance coverage”; and “individual health insurance coverage” have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), and section 9832 of the Internal Revenue Code of 1986, as applicable.

**SEC. 6002. WAIVING COST SHARING UNDER THE MEDICARE PROGRAM FOR CERTAIN VISITS RELATING TO TESTING FOR COVID-19.**

(a) **IN GENERAL.**—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(1)—

(A) by striking “and” before “(CC)”; and

(B) by inserting before the period at the end the following: “, and (DD) with respect to a specified COVID-19 testing-related service described in paragraph (1) of subsection (cc) for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection, the amounts paid shall be 100 percent of the payment amount otherwise recognized under such respective specified outpatient payment provision for such service,”;

(2) in subsection (b), in the first sentence—

(A) by striking “and” before “(10)”; and

(B) by inserting before the period at the end the following: “, and (11) such deductible shall not apply with respect to any specified COVID-19 testing-related service described in paragraph (1) of subsection (cc) for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection”; and

(3) by adding at the end the following new subsection:

“(cc) **SPECIFIED COVID-19 TESTING-RELATED SERVICES.**—For purposes of subsection (a)(1)(DD):

“(1) **DESCRIPTION.**—

“(A) **IN GENERAL.**—A specified COVID-19 testing-related service described in this paragraph is a medical visit that—

“(i) is in any of the categories of HCPCS evaluation and management service codes described in subparagraph (B);

“(ii) is furnished during any portion of the emergency period (as defined in section 1135(g)(1)(B))

## H. R. 6201—26

(beginning on or after the date of enactment of this subsection);

“(iii) results in an order for or administration of a clinical diagnostic laboratory test described in section 1852(a)(1)(B)(iv)(IV); and

“(iv) relates to the furnishing or administration of such test or to the evaluation of such individual for purposes of determining the need of such individual for such test.

“(B) CATEGORIES OF HCPCS CODES.—For purposes of subparagraph (A), the categories of HCPCS evaluation and management services codes are the following:

“(i) Office and other outpatient services.

“(ii) Hospital observation services.

“(iii) Emergency department services.

“(iv) Nursing facility services.

“(v) Domiciliary, rest home, or custodial care services.

“(vi) Home services.

“(vii) Online digital evaluation and management services.

“(2) SPECIFIED OUTPATIENT PAYMENT PROVISION.—A specified outpatient payment provision described in this paragraph is any of the following:

“(A) The hospital outpatient prospective payment system under subsection (t).

“(B) The physician fee schedule under section 1848.

“(C) The prospective payment system developed under section 1834(o).

“(D) Section 1834(g), with respect to an outpatient critical access hospital service.

“(E) The payment basis determined in regulations pursuant to section 1833(a)(3) for rural health clinic services.”.

(b) CLAIMS MODIFIER.—The Secretary of Health and Human Services shall provide for an appropriate modifier (or other identifier) to include on claims to identify, for purposes of subparagraph (DD) of section 1833(a)(1), as added by subsection (a), specified COVID-19 testing-related services described in paragraph (1) of section 1833(cc) of the Social Security Act, as added by subsection (a), for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection.

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, including amendments made by, this section through program instruction or otherwise.

**SEC. 6003. COVERAGE OF TESTING FOR COVID-19 AT NO COST SHARING UNDER THE MEDICARE ADVANTAGE PROGRAM.**

(a) IN GENERAL.—Section 1852(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w-22(a)(1)(B)) is amended—

(1) in clause (iv)—

(A) by redesignating subclause (IV) as subclause (VI); and

(B) by inserting after subclause (III) the following new subclauses:

## H. R. 6201—27

“(IV) Clinical diagnostic laboratory test administered during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of the Families First Coronavirus Response Act for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 and the administration of such test.

“(V) Specified COVID-19 testing-related services (as described in section 1833(cc)(1)) for which payment would be payable under a specified outpatient payment provision described in section 1833(cc)(2).”;

(2) in clause (v), by inserting “, other than subclauses (IV) and (V) of such clause,” after “clause (iv)”; and

(3) by adding at the end the following new clause:

“(vi) PROHIBITION OF APPLICATION OF CERTAIN REQUIREMENTS FOR COVID-19 TESTING.—In the case of a product or service described in subclause (IV) or (V), respectively, of clause (iv) that is administered or furnished during any portion of the emergency period described in such subclause beginning on or after the date of the enactment of this clause, an MA plan may not impose any prior authorization or other utilization management requirements with respect to the coverage of such a product or service under such plan.”.

(b) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the amendments made by this section by program instruction or otherwise.

**SEC. 6004. COVERAGE AT NO COST SHARING OF COVID-19 TESTING UNDER MEDICAID AND CHIP.**

(a) MEDICAID.—

(1) IN GENERAL.—Section 1905(a)(3) of the Social Security Act (42 U.S.C. 1396d(a)(3)) is amended—

(A) by striking “other laboratory” and inserting “(A) other laboratory”;

(B) by inserting “and” after the semicolon; and

(C) by adding at the end the following new subparagraph:

“(B) in vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) administered during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subparagraph for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products;”.

(2) NO COST SHARING.—

(A) IN GENERAL.—Subsections (a)(2) and (b)(2) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended—

## H. R. 6201—28

(i) in subparagraph (D), by striking “or” at the end;

(ii) in subparagraph (E), by striking “; and” and inserting a comma; and

(iii) by adding at the end the following new subparagraphs:

“(F) any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such product), or

“(G) COVID-19 testing-related services for which payment may be made under the State plan; and”.

(B) APPLICATION TO ALTERNATIVE COST SHARING.—Section 1916A(b)(3)(B) of the Social Security Act (42 U.S.C. 1396o-1(b)(3)(B)) is amended by adding at the end the following new clause:

“(xi) Any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this clause (and the administration of such product) and any visit described in section 1916(a)(2)(G) that is furnished during any such portion.”.

(C) CLARIFICATION.—The amendments made this paragraph shall apply with respect to a State plan of a territory in the same manner as a State plan of one of the 50 States.

(3) STATE OPTION TO PROVIDE COVERAGE FOR UNINSURED INDIVIDUALS.—

(A) IN GENERAL.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(i) in subparagraph (A)(ii)—

(I) in subclause (XXI), by striking “or” at the end;

(II) in subclause (XXII), by adding “or” at the end; and

(III) by adding at the end the following new subclause:

“(XXIII) during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subclause, who are uninsured individuals (as defined in subsection (ss));”;

(ii) in the matter following subparagraph (G)—

(I) by striking “and (XVII)” and inserting “, (XVII);”;

(II) by inserting after “instead of through subclause (VIII)” the following: “, and (XVIII) the medical assistance made available to an uninsured individual (as defined in subsection (ss)) who is eligible for medical assistance only because of subparagraph (A)(ii)(XXIII) shall be limited to medical assistance for any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or



## H. R. 6201—29

after the date of the enactment of this subclause (and the administration of such product) and any visit described in section 1916(a)(2)(G) that is furnished during any such portion”.

(B) RECEIPT AND INITIAL PROCESSING OF APPLICATIONS AT CERTAIN LOCATIONS.—Section 1902(a)(55) of the Social Security Act (42 U.S.C. 1396a(a)(55)) is amended, in the matter preceding subparagraph (A), by striking “or (a)(10)(A)(ii)(IX)” and inserting “(a)(10)(A)(ii)(IX), or (a)(10)(A)(ii)(XXIII)”.

(C) UNINSURED INDIVIDUAL DEFINED.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

“(ss) UNINSURED INDIVIDUAL DEFINED.—For purposes of this section, the term ‘uninsured individual’ means, notwithstanding any other provision of this title, any individual who is—

“(1) not described in subsection (a)(10)(A)(i); and

“(2) not enrolled in a Federal health care program (as defined in section 1128B(f)), a group health plan, group or individual health insurance coverage offered by a health insurance issuer (as such terms are defined in section 2791 of the Public Health Service Act), or a health plan offered under chapter 89 of title 5, United States Code.”.

(D) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence of this subsection, the Federal medical assistance percentage shall be 100 per centum with respect to (and, notwithstanding any other provision of this title, available for) medical assistance provided to uninsured individuals (as defined in section 1902(ss)) who are eligible for such assistance only on the basis of section 1902(a)(10)(A)(ii)(XXIII) and with respect to expenditures described in section 1903(a)(7) that a State demonstrates to the satisfaction of the Secretary are attributable to administrative costs related to providing for such medical assistance to such individuals under the State plan.”.

(b) CHIP.—

(1) IN GENERAL.—Section 2103(c) of the Social Security Act (42 U.S.C. 1397cc(c)) is amended by adding at the end the following paragraph:

“(10) CERTAIN IN VITRO DIAGNOSTIC PRODUCTS FOR COVID-19 TESTING.—The child health assistance provided to a targeted low-income child shall include coverage of any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such product).”.

(2) COVERAGE FOR TARGETED LOW-INCOME PREGNANT WOMEN.—Section 2112(b)(4) of the Social Security Act (42 U.S.C. 1397ll(b)(4)) is amended by inserting “under section 2103(c)” after “same requirements”.

(3) PROHIBITION OF COST SHARING.—Section 2103(e)(2) of the Social Security Act (42 U.S.C. 1397cc(e)(2)) is amended—

## H. R. 6201—30

(A) in the paragraph header, by inserting “, COVID-19 TESTING,” before “OR PREGNANCY-RELATED ASSISTANCE”; and

(B) by striking “category of services described in subsection (c)(1)(D) or” and inserting “categories of services described in subsection (c)(1)(D), in vitro diagnostic products described in subsection (c)(10) (and administration of such products), visits described in section 1916(a)(2)(G), or”.

**SEC. 6005. TREATMENT OF PERSONAL RESPIRATORY PROTECTIVE DEVICES AS COVERED COUNTERMEASURES.**

Section 319F-3(i)(1) of the Public Health Service Act (42 U.S.C. 247d-6d(i)(1)) is amended—

(1) in subparagraph (B), by striking “or” at the end;  
 (2) in subparagraph (C), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(D) a personal respiratory protective device that is—

“(i) approved by the National Institute for Occupational Safety and Health under part 84 of title 42, Code of Federal Regulations (or successor regulations);

“(ii) subject to the emergency use authorization issued by the Secretary on March 2, 2020, or subsequent emergency use authorizations, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (authorizing emergency use of personal respiratory protective devices during the COVID-19 outbreak); and

“(iii) used during the period beginning on January 27, 2020, and ending on October 1, 2024, in response to the public health emergency declared on January 31, 2020, pursuant to section 319 as a result of confirmed cases of 2019 Novel Coronavirus (2019-nCoV).”

**SEC. 6006. APPLICATION WITH RESPECT TO TRICARE, COVERAGE FOR VETERANS, AND COVERAGE FOR FEDERAL CIVILIANS.**

(a) **TRICARE.**—The Secretary of Defense may not require any copayment or other cost sharing under chapter 55 of title 10, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act.

(b) **VETERANS.**—The Secretary of Veterans Affairs may not require any copayment or other cost sharing under chapter 17 of title 38, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act.

(c) **FEDERAL CIVILIANS.**—No copayment or other cost sharing may be required for any individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code) enrolled in a health benefits plan, including

## H. R. 6201—31

any plan under chapter 89 of title 5, United States Code, or for any other individual currently enrolled in any plan under chapter 89 of title 5 for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act.

**SEC. 6007. COVERAGE OF TESTING FOR COVID-19 AT NO COST SHARING FOR INDIANS RECEIVING PURCHASED/REFERRED CARE.**

The Secretary of Health and Human Services shall cover, without the imposition of any cost sharing requirements, the cost of providing any COVID-19 related items and services as described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act to Indians (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) receiving health services through the Indian Health Service, including through an Urban Indian Organization, regardless of whether such items or services have been authorized under the purchased/referred care system funded by the Indian Health Service or is covered as a health service of the Indian Health Service.

**SEC. 6008. TEMPORARY INCREASE OF MEDICAID FMAP.**

(a) IN GENERAL.—Subject to subsection (b), for each calendar quarter occurring during the period beginning on the first day of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) and ending on the last day of the calendar quarter in which the last day of such emergency period occurs, the Federal medical assistance percentage determined for each State, including the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands, under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) shall be increased by 6.2 percentage points.

(b) REQUIREMENT FOR ALL STATES.—A State described in subsection (a) may not receive the increase described in such subsection in the Federal medical assistance percentage for such State, with respect to a quarter, if—

(1) eligibility standards, methodologies, or procedures under the State plan of such State under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or section 1115 of such Act (42 U.S.C. 1315)) are more restrictive during such quarter than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on January 1, 2020;

(2) the amount of any premium imposed by the State pursuant to section 1916 or 1916A of such Act (42 U.S.C. 1396o, 1396o–1) during such quarter, with respect to an individual enrolled under such plan (or waiver), exceeds the amount of such premium as of January 1, 2020;

(3) the State fails to provide that an individual who is enrolled for benefits under such plan (or waiver) as of the date of enactment of this section or enrolls for benefits under

## H. R. 6201—32

such plan (or waiver) during the period beginning on such date of enactment and ending the last day of the month in which the emergency period described in subsection (a) ends shall be treated as eligible for such benefits through the end of the month in which such emergency period ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State; or

(4) the State does not provide coverage under such plan (or waiver), without the imposition of cost sharing, during such quarter for any testing services and treatments for COVID-19, including vaccines, specialized equipment, and therapies.

(c) REQUIREMENT FOR CERTAIN STATES.—Section 1905(cc) of the Social Security Act (42 U.S.C. 1396d(cc)) is amended by striking the period at the end of the subsection and inserting “and section 6008 of the Families First Coronavirus Response Act, except that in applying such treatments to the increases in the Federal medical assistance percentage under section 6008 of the Families First Coronavirus Response Act, the reference to ‘December 31, 2009’ shall be deemed to be a reference to ‘March 11, 2020’.”.

**SEC. 6009. INCREASE IN MEDICAID ALLOTMENTS FOR TERRITORIES.**

Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B)—

- (i) in clause (i), by striking “and” at the end;
- (ii) in clause (ii), by striking “for each of fiscal years 2020 through 2021, \$126,000,000;” and inserting “for fiscal year 2020, \$128,712,500; and”; and
- (iii) by adding at the end the following new clause: “(iii) for fiscal year 2021, \$127,937,500;”;

(B) in subparagraph (C)—

- (i) in clause (i), by striking “and” at the end;
- (ii) in clause (ii), by striking “for each of fiscal years 2020 through 2021, \$127,000,000;” and inserting “for fiscal year 2020, \$130,875,000; and”; and
- (iii) by adding at the end the following new clause: “(iii) for fiscal year 2021, \$129,712,500;”;

(C) in subparagraph (D)—

- (i) in clause (i), by striking “and” at the end;
- (ii) in clause (ii), by striking “for each of fiscal years 2020 through 2021, \$60,000,000; and” and inserting “for fiscal year 2020, \$63,100,000; and”; and
- (iii) by adding at the end the following new clause: “(iii) for fiscal year 2021, \$62,325,000; and”; and

(D) in subparagraph (E)—

- (i) in clause (i), by striking “and” at the end;
- (ii) in clause (ii), by striking “for each of fiscal years 2020 through 2021, \$84,000,000.” and inserting “for fiscal year 2020, \$86,325,000; and”; and
- (iii) by adding at the end the following new clause: “(iii) for fiscal year 2021, \$85,550,000.”; and

(2) in paragraph (6)(A)—

- (A) in clause (i), by striking “\$2,623,188,000” and inserting “\$2,716,188,000”; and
- (B) in clause (ii), by striking “\$2,719,072,000” and inserting “\$2,809,063,000”.

H. R. 6201—33

**SEC. 6010. CLARIFICATION RELATING TO SECRETARIAL AUTHORITY REGARDING MEDICARE TELEHEALTH SERVICES FURNISHED DURING COVID-19 EMERGENCY PERIOD.**

Paragraph (3)(A) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) is amended to read as follows:

“(A) furnished to such individual, during the 3-year period ending on the date such telehealth service was furnished, an item or service that would be considered covered under title XVIII if furnished to an individual entitled to benefits or enrolled under such title; or”.

**DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE****SEC. 7001. PAYROLL CREDIT FOR REQUIRED PAID SICK LEAVE.**

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified sick leave wages taken into account under subsection (a) with respect to any individual shall not exceed \$200 (\$511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

(2) OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.—The aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

(A) 10, over

(B) the aggregate number of days so taken into account for all preceding calendar quarters.

(3) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(4) REFUNDABILITY OF EXCESS CREDIT.—

(A) IN GENERAL.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

## H. R. 6201—34

(c) **QUALIFIED SICK LEAVE WAGES.**—For purposes of this section, the term “qualified sick leave wages” means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act.

(d) **ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.**—

(1) **IN GENERAL.**—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

(2) **QUALIFIED HEALTH PLAN EXPENSES.**—For purposes of this subsection, the term “qualified health plan expenses” means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

(3) **ALLOCATION RULES.**—For purposes of this section, qualified health plan expenses shall be allocated to qualified sick leave wages in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) **SPECIAL RULES.**—

(1) **DENIAL OF DOUBLE BENEFIT.**—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) **ELECTION NOT TO HAVE SECTION APPLY.**—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe) not to have this section apply.

(3) **CERTAIN TERMS.**—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) **CERTAIN GOVERNMENTAL EMPLOYERS.**—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) **REGULATIONS.**—The Secretary of the Treasury (or the Secretary’s delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

## H. R. 6201—35

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act.

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

**SEC. 7002. CREDIT FOR SICK LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS.**

(a) CREDIT AGAINST SELF-EMPLOYMENT TAX.—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for any taxable year an amount equal to the qualified sick leave equivalent amount with respect to the individual.

(b) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—For purposes of this section, the term “eligible self-employed individual” means an individual who—

(1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and

(2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer (other than himself or herself).

(c) QUALIFIED SICK LEAVE EQUIVALENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term “qualified sick leave equivalent amount” means, with respect to any eligible self-employed individual, an amount equal to—

(A) the number of days during the taxable year (but not more than the applicable number of days) that the individual is unable to perform services in any trade or business referred to in section 1402 of such Code for a

## H. R. 6201—36

reason with respect to which such individual would be entitled to receive sick leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) \$200 (\$511 in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act), or

(ii) 67 percent (100 percent in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) of the average daily self-employment income of the individual for the taxable year.

(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME.—For purposes of this subsection, the term “average daily self-employment income” means an amount equal to—

(A) the net earnings from self-employment of the individual for the taxable year, divided by  
(B) 260.

(3) APPLICABLE NUMBER OF DAYS.—For purposes of this subsection, the term “applicable number of days” means, with respect to any taxable year, the excess (if any) of 10 days over the number of days taken into account under paragraph (1)(A) in all preceding taxable years.

(d) SPECIAL RULES.—

(1) CREDIT REFUNDABLE.—

(A) IN GENERAL.—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(2) DOCUMENTATION.—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary's delegate) may prescribe to establish such individual as an eligible self-employed individual.

(3) DENIAL OF DOUBLE BENEFIT.—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act, the qualified sick leave equivalent amount otherwise determined under subsection (c) shall be reduced (but not below zero) to the extent that the sum of the amount described in such subsection and in section 7001(b)(1) exceeds \$2,000 (\$5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act).

(4) CERTAIN TERMS.—Any term used in this section which is also used in chapter 2 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.



## H. R. 6201—37

(e) APPLICATION OF SECTION.—Only days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020, may be taken into account under subsection (c)(1)(A).

(f) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary of the Treasury (or the Secretary's delegate) based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury (or the Secretary's delegate) as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury (or the Secretary's delegate), under which such possession will promptly distribute such payments to its residents.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(g) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to effectuate the purposes of this Act, and

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

**SEC. 7003. PAYROLL CREDIT FOR REQUIRED PAID FAMILY LEAVE.**

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

## H. R. 6201—38

(1) **WAGES TAKEN INTO ACCOUNT.**—The amount of qualified family leave wages taken into account under subsection (a) with respect to any individual shall not exceed—

(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, \$200, and

(B) in the aggregate with respect to all calendar quarters, \$10,000.

(2) **CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.**—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, and section 7001 of this Act, for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(3) **REFUNDABILITY OF EXCESS CREDIT.**—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(c) **QUALIFIED FAMILY LEAVE WAGES.**—For purposes of this section, the term “qualified family leave wages” means wages (as defined in section 3121(a) of such Code) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act).

(d) **ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.**—

(1) **IN GENERAL.**—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified family leave wages for which such credit is so allowed.

(2) **QUALIFIED HEALTH PLAN EXPENSES.**—For purposes of this subsection, the term “qualified health plan expenses” means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

(3) **ALLOCATION RULES.**—For purposes of this section, qualified health plan expenses shall be allocated to qualified family leave wages in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) **SPECIAL RULES.**—

(1) **DENIAL OF DOUBLE BENEFIT.**—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under

## H. R. 6201—39

this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

(3) CERTAIN TERMS.—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act).

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

## H. R. 6201—40

**SEC. 7004. CREDIT FOR FAMILY LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS.**

(a) **CREDIT AGAINST SELF-EMPLOYMENT TAX.**—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for any taxable year an amount equal to 100 percent of the qualified family leave equivalent amount with respect to the individual.

(b) **ELIGIBLE SELF-EMPLOYED INDIVIDUAL.**—For purposes of this section, the term “eligible self-employed individual” means an individual who—

(1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and

(2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Family and Medical Leave Expansion Act if the individual were an employee of an employer (other than himself or herself).

(c) **QUALIFIED FAMILY LEAVE EQUIVALENT AMOUNT.**—For purposes of this section—

(1) **IN GENERAL.**—The term “qualified family leave equivalent amount” means, with respect to any eligible self-employed individual, an amount equal to the product of—

(A) the number of days (not to exceed 50) during the taxable year that the individual is unable to perform services in any trade or business referred to in section 1402 of such Code for a reason with respect to which such individual would be entitled to receive paid leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) 67 percent of the average daily self-employment income of the individual for the taxable year, or

(ii) \$200.

(2) **AVERAGE DAILY SELF-EMPLOYMENT INCOME.**—For purposes of this subsection, the term “average daily self-employment income” means an amount equal to—

(A) the net earnings from self-employment income of the individual for the taxable year, divided by

(B) 260.

(d) **SPECIAL RULES.**—

(1) **CREDIT REFUNDABLE.**—

(A) **IN GENERAL.**—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(B) **TREATMENT OF PAYMENTS.**—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(2) **DOCUMENTATION.**—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary's delegate) may prescribe to establish such individual as an eligible self-employed individual.

(3) **DENIAL OF DOUBLE BENEFIT.**—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined

## H. R. 6201—41

in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act, the qualified family leave equivalent amount otherwise described in subsection (c) shall be reduced (but not below zero) to the extent that the sum of the amount described in such subsection and in section 7003(b)(1) exceeds \$10,000.

(4) CERTAIN TERMS.—Any term used in this section which is also used in chapter 2 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

(5) REFERENCES TO EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT.—Any reference in this section to the Emergency Family and Medical Leave Expansion Act shall be treated as including a reference to the amendments made by such Act.

(e) APPLICATION OF SECTION.—Only days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020, may be taken into account under subsection (c)(1)(A).

(f) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary of the Treasury (or the Secretary's delegate) based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury (or the Secretary's delegate) as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury (or the Secretary's delegate), under which such possession will promptly distribute such payments to its residents.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

## H. R. 6201—42

(e) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

- (1) regulations or other guidance to prevent the avoidance of the purposes of this Act, and
- (2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

**SEC. 7005. SPECIAL RULE RELATED TO TAX ON EMPLOYERS.**

(a) IN GENERAL.—Any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of section 3111(a) of the Internal Revenue Code of 1986 or compensation for purposes of section 3221(a) of such Code.

(b) ALLOWANCE OF CREDIT FOR HOSPITAL INSURANCE TAXES.—

(1) IN GENERAL.—The credit allowed by section 7001 and the credit allowed by section 7003 shall each be increased by the amount of the tax imposed by section 3111(b) of the Internal Revenue Code of 1986 on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 7001 or 7003 (respectively).

(2) DENIAL OF DOUBLE BENEFIT.—For denial of double benefit with respect to the credit increase under paragraph (1), see sections 7001(e)(1) and 7003(e)(1).

(c) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

**DIVISION H—BUDGETARY EFFECTS****SEC. 8001. BUDGETARY EFFECTS.**

(a) STATUTORY PAYGO SCORECARDS.—The budgetary effects of division B and each succeeding division shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARDS.—The budgetary effects of division B and each succeeding division shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).

(c) CLASSIFICATION OF BUDGETARY EFFECTS.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105-217 and section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the

H. R. 6201—43

budgetary effects of division B and each succeeding division shall not be estimated—

- (1) for purposes of section 251 of such Act; and
- (2) for purposes of paragraph (4)(C) of section 3 of the Statutory Pay-As-You-Go Act of 2010 as being included in an appropriation Act.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*



## Senate Bill No. 95

### CHAPTER 13

An act to add Sections 248.2 and 248.3 to the Labor Code, relating to employment, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor March 19, 2021. Filed with Secretary of State March 19, 2021.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 95, Skinner. Employment: COVID-19: supplemental paid sick leave.

Existing law, the Healthy Workplaces, Healthy Families Act of 2014, entitles an employee who works in California for the same employer for 30 or more days within a year from the commencement of employment to paid sick days. Under existing law, an employee accrues paid sick days at a rate of not less than one hour per every 30 hours worked, subject to certain use, accrual, and yearly carryover limitations. Existing law requires the Labor Commissioner to enforce the act and provides for procedures, including investigation and hearing, and for remedies and penalties.

Existing law, until December 31, 2020, provided for COVID-19 food sector supplemental paid sick leave for food sector workers and required a hiring entity to provide COVID-19 food sector supplemental paid sick leave, as described, to each food sector worker unable to work due to specified reasons relating to COVID-19. Existing law also established, until December 31, 2020, COVID-19 supplemental paid sick leave for covered workers, including certain persons employed by private businesses of 500 or more employees or persons employed as certain types of health care providers or emergency responders by public or private entities.

This bill would provide for COVID-19 supplemental paid sick leave for covered employees, as defined, who are unable to work or telework due to certain reasons related to COVID-19, including that the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. The bill would entitle a covered employee to 80 hours of COVID-19 supplemental paid sick leave if that employee either works full time or was scheduled to work, on average, at least 40 hours per week for the employer in the 2 weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave. The bill would provide a different calculation for supplemental paid sick leave for a covered employee who is a firefighter subject to certain work schedule requirements and for a covered employee working fewer or variable hours, as specified. The bill would provide that the total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled to under these



Ch. 13

— 2 —

provisions is in addition to any paid sick leave available under the act, as specified.

This bill would set the compensation rate for a nonexempt covered employee at the highest of the covered employee's regular rate of pay for the pay period in which the supplemental paid sick leave is taken, the state minimum wage, or the local minimum wage to which the covered employee is entitled, up to certain daily and aggregate total maximum payment limits and subject to specified federal law increases. The bill would prohibit an employer from requiring a covered employee to use other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before that employee uses COVID-19 supplemental paid leave or in lieu thereof, except in certain circumstances in which the employer provides another supplemental benefit for leave for COVID-19, as prescribed. The bill would require the Labor Commissioner to enforce these COVID-19 supplemental paid sick leave provisions, as provided. The bill would also require the Labor Commissioner to make publicly available a model notice relating to COVID-19 supplemental paid sick leave.

This bill would also provide for COVID-19 supplemental paid sick leave for specified in-home supportive service providers and personal waiver care service providers, as defined, who are unable to work or telework due to certain reasons related to COVID-19. Under the bill, a provider would be entitled to COVID-19 supplemental paid leave if, among other reasons, the provider is subject to a quarantine or isolation period related to COVID-19 pursuant to an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. The bill would entitle a provider to up to 80 hours of COVID-19 supplemental paid leave, if the provider worked or was scheduled to work, on average, at least 40 hours per week, as specified, or met certain other work conditions. The bill would set the compensation rate for this supplemental paid sick leave, as specified. The bill would authorize the State Department of Social Services and the State Department of Health Care Services to implement, interpret, or make these provisions specific by means of all-county letters or similar instructions, without taking any regulatory action.

The bill would make these requirements, with respect to covered employees, in-home supportive service providers, and personal waiver care service providers, to provide COVID-19 supplemental paid sick leave take effect 10 days after the date of enactment of the bill and would apply these provisions retroactively to January 1, 2021, as specified. The bill would provide that the requirement to provide COVID-19 supplemental paid sick leave would apply until September 30, 2021, as specified.

This bill would appropriate \$100,000 from the General Fund to the Labor Commissioner for staffing resources to implement and enforce these provisions.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 248.2 is added to the Labor Code, to read:

248.2. (a) As used in this section:

(1) "COVID-19 supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(2) "Employer" means an employer, as defined in subdivision (b) of Section 245.5, that employs more than 25 employees.

(3) "Covered employee" means an employee who is unable to work or telework for an employer because of a reason listed under paragraph (1) of subdivision (b).

(4) "Firefighter" means an active firefighting member of any of the following:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(E) A fire department that serves a United States Department of Defense installation and whose firefighters are certified by the United States Department of Defense as meeting its standards for firefighters.

(F) A fire department that serves a National Aeronautics and Space Administration installation and that adheres to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(G) A fire department that provides fire protection to a commercial airport regulated by the Federal Aviation Administration (FAA) under Part 139 (commencing with Section 139.1) of Subchapter G of Chapter 1 of Title 14 of the Federal Code of Regulations whose firefighters are trained and certified by the State Fire Marshal as meeting the standards of Fire Control 5 and Section 139.319 of Title 14 of the Federal Code of Regulations.

(H) Fire and rescue services coordinators who work for the Office of Emergency Services. For purposes of this clause, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(b) A covered employee shall be entitled to COVID-19 supplemental paid sick leave as follows:

(1) An employer shall provide COVID-19 supplemental paid sick leave to each covered employee if that covered employee is unable to work or telework due to any of the following reasons:

(A) The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and

## Ch. 13

— 4 —

Prevention, or a local health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period.

(B) The covered employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(C) The covered employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.

(D) The covered employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.

(E) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The covered employee is caring for a family member, as defined in subdivision (c) of Section 245.5, who is subject to an order or guidelines described in subparagraph (A) or who has been advised to self-quarantine, as described in subparagraph (B).

(G) The covered employee is caring for a child, as defined in subdivision (c) of Section 245.5, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

(2) A covered employee shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

(A) A covered employee is entitled to 80 hours of COVID-19 supplemental paid sick leave, if the covered employee satisfies either of the following criteria:

(i) The employer considers the covered employee to work full time.

(ii) The covered employee worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave.

(B) Notwithstanding subparagraph (A), a covered employee who is a firefighter who was scheduled to work more than 80 hours for the employer in the two weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave is entitled to an amount of COVID-19 supplemental paid sick leave equal to the total number of hours that the covered employee was scheduled to work for the employer in those two preceding weeks.

(C) A covered employee who does not satisfy the criteria in subparagraph (A) or subparagraph (B) is entitled to an amount of COVID-19 supplemental paid sick leave as follows:

(i) If the covered employee has a normal weekly schedule, the total number of hours the covered employee is normally scheduled to work for the employer over two weeks.

(ii) If the covered employee works a variable number of hours, 14 times the average number of hours the covered employee worked each day for the employer in the six months preceding the date the covered employee took COVID-19 supplemental paid sick leave. If the covered employee has

worked for the employer over a period of fewer than six months but more than 14 days, this calculation shall instead be made over the entire period the covered employee has worked for the employer.

(iii) If the covered employee works a variable number of hours and has worked for the employer over a period of 14 days or fewer, the total number of hours the covered employee has worked for that employer.

(D) The total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled pursuant to subparagraph (A), (B), or (C) shall be in addition to any paid sick leave that may be available to the covered employee under Section 246.

(E) A covered employee may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the covered employee is entitled pursuant to subparagraph (A), (B), or (C) of this paragraph. The employer shall make COVID-19 supplemental paid sick leave available for immediate use by the covered employee, upon the oral or written request of the covered employee to the employer.

(F) An employer is not required to provide a covered employee more than the total number of hours of COVID-19 supplemental paid sick leave to which the covered employee is entitled pursuant to subparagraph (A), (B), or (C) of this paragraph.

(3) (A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following:

(i) For nonexempt covered employees, by the highest of the following:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

(ii) COVID-19 supplemental paid sick leave for exempt covered employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(B) Notwithstanding subparagraph (A), a covered employee who is entitled to an amount of COVID-19 supplemental paid sick leave under subparagraph (B) of paragraph (2), shall be compensated for each hour of COVID-19 supplemental paid sick leave at the regular rate of pay to which the covered employee would be entitled as if the covered employee had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement.

(C) Notwithstanding subparagraph (A) or (B), an employer shall not be required to pay more than five hundred eleven dollars (\$511) per day and five thousand one hundred ten dollars (\$5,110) in the aggregate to a covered employee for COVID-19 supplemental paid sick leave taken by the covered employee unless federal legislation is enacted that increases these amounts

## Ch. 13

— 6 —

beyond the amounts that were included in the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), in which case the new federal dollar amounts shall apply to this section as of the date the new amounts are applicable under the federal law. Nothing in this subparagraph shall prevent a covered employee who has reached the maximum amounts, as set forth herein, from choosing to utilize other paid leave that is available to the covered employee in order to fully compensate the covered employee for leave taken.

(4) An employer shall not require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

(5) Notwithstanding any other provision in this section, in order to satisfy the requirement to maintain an employee's earnings when an employee is excluded from the workplace due to COVID-19 exposure under the Cal-OSHA COVID-19 Emergency Temporary Standards at Sections 3205 through 3205.4, inclusive, of Title 8 of the California Code of Regulations or the Cal-OSHA Aerosol Transmissible Diseases Standard at Section 5199 of Title 8 of the California Code of Regulations, an employer may require a covered employee to first exhaust their COVID-19 supplemental paid sick leave under this section.

(c) Notwithstanding subdivision (b), if an employer pays a covered employee another supplemental benefit for leave taken on or after January 1, 2021, that is payable for the reasons listed in paragraph (1) of subdivision (b) and that compensates the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled as set forth under paragraph (3) of subdivision (b), then the employer may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental benefit for leave taken that may be counted does not include paid sick leave to which the covered employee is entitled under Section 246, subdivision (e) of Section 248, or subdivision (f) of Section 248.1 but may include paid leave provided by the employer pursuant to any federal or local law in effect or that became effective on or after January 1, 2021, if the paid leave is provided to the covered employee under that law for any of the same reasons set forth in paragraph (1) of subdivision (b).

(d) In addition to other remedies as may be provided by the laws of this state or its subdivisions, including, but not limited to, the remedies available to redress any unlawful business practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, the Labor Commissioner shall enforce this section. For purposes of enforcement and to implement COVID-19 supplemental paid sick leave, this section shall apply as follows:

(1) The Labor Commissioner shall enforce this section as if COVID-19 supplemental paid sick leave constitutes “paid sick days,” “paid sick leave,” or “sick leave” under subdivisions (i) and (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5.

(2) For purposes of the enforcement of subdivision (i) of Section 246 as it relates to this section:

(A) COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days.

(B) The requirement in subdivision (i) of Section 246 is not enforceable until the next full pay period following the date that this section takes effect.

(C) When covered employees have schedules described in clauses (ii) and (iii) of subparagraph (C) of paragraph (2) of subdivision (b), an employer may meet the requirement of subdivision (i) of Section 246 for such covered employees by doing an initial calculation of COVID-19 supplemental paid sick leave available and indicating “(variable)” next to that calculation. This, however, does not exempt an employer from providing a covered employee an updated calculation when such a covered employee requests to use COVID-19 supplemental paid sick leave or requests relevant records under Section 247.5.

(3) Section 249 applies to COVID-19 supplemental paid sick leave.

(4) By seven days after the date of enactment of this section, the Labor Commissioner shall make publicly available a model notice for purposes of Section 247. Only for purposes of COVID-19 supplemental paid sick leave, if an employer’s covered employees do not frequent a workplace, the employer may satisfy the notice requirement of subdivision (a) of Section 247 by disseminating notice through electronic means, such as by electronic mail.

(e) (1) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall take effect 10 days after the date of enactment of this section, at which time the requirements shall apply retroactively to January 1, 2021.

(2) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section applies retroactively to January 1, 2021, in order to protect the economic well-being of covered employees who took leave for the reasons listed in paragraph (1) of subdivision (b) beginning on or after January 1, 2021, when the requirements in Sections 248, 248.1, and the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127) expired, and before the effective date of this section.

(A) For any such leave taken, if the employer did not compensate the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled as set forth under paragraph (3) of subdivision (b), then upon the oral or written request of the employee, the employer shall provide the covered employee with a retroactive payment that provides for such compensation.

## Ch. 13

— 8 —

(B) For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee under paragraph (2) of subdivision (b).

(C) This retroactive payment shall be paid on or before the payday for the next full pay period after the oral or written request of the covered employee. The retroactive payment shall be reflected on the written notice required by subparagraph (B) of paragraph (2) of subdivision (d) for the corresponding pay period.

(D) The requirement to provide a retroactive payment under this subdivision is in addition to the requirements in subdivision (e) of Section 248 and subdivision (f) of Section 248.1 that a covered employee taking COVID-19 food sector supplemental paid sick leave or COVID-19 supplemental paid sick leave at the time of the expiration of those sections shall be permitted to take the full amount of such supplemental paid sick leave to which that covered employee otherwise would have been entitled under those sections.

(f) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall remain in effect through September 30, 2021, except that a covered employee taking COVID-19 supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 supplemental paid sick leave to which the covered employee otherwise would have been entitled under this section.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) The provisions of this section shall not apply to providers of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant to Section 14132.97 of the Welfare and Institutions Code.

SEC. 2. Section 248.3 is added to the Labor Code, to read:

248.3. (a) As used in this section:

(1) “COVID-19 supplemental paid sick leave” means supplemental paid sick leave provided pursuant to this section.

(2) “Provider” or “providers” means a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant to Section 14132.97 of the Welfare and Institutions Code.

(3) “Work” or “worked” means providing authorized in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant

to Section 14132.97 of the Welfare and Institutions Code, to an eligible recipient.

(b) A provider shall be entitled to COVID-19 supplemental paid sick leave as follows:

(1) COVID-19 supplemental paid sick leave shall be available to a provider if that provider is unable to work due to any of the following reasons:

(A) The provider is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace. If the provider is subject to more than one of the foregoing, the provider shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest minimum period.

(B) The provider has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(C) The provider is attending an appointment to receive a vaccine for protection against contracting COVID-19.

(D) The provider is experiencing symptoms related to a COVID-19 vaccine that prevents the provider from being able to work.

(E) The provider is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The provider is caring for a family member, as defined in subdivision (c) of Section 245.5, who is subject to an order or guidelines described in subparagraph (A) or who has been advised to self-quarantine, as described in subparagraph (B).

(G) The provider is caring for a child, as defined in subdivision (c) of Section 245.5, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

(2) A provider shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

(A) A provider is entitled to 80 hours of COVID-19 supplemental paid sick leave if the provider worked or was scheduled to work, on average, at least 40 hours per week in the two weeks preceding the date the provider took COVID-19 supplemental paid sick leave.

(B) A provider who does not satisfy the criteria in subparagraph (A) is entitled to an amount of COVID-19 supplemental paid sick leave as follows, up to a maximum of 80 hours of COVID-19 supplemental paid sick leave:

(i) If the provider has a regular weekly schedule, the total number of hours the provider is normally scheduled to work over two weeks.

(ii) If the provider works a variable number of hours, 14 times the average number of hours the provider worked each day for the employer in the six months preceding the date the provider took COVID-19 supplemental paid sick leave. If the provider has worked over a period of fewer than six months but more than 14 days, this calculation shall instead be made over the entire period the provider has worked.



## Ch. 13

— 10 —

(iii) If the provider works a variable number of hours and has worked over a period of 14 days or fewer, the total number of hours the provider has worked.

(C) The total number of hours of COVID-19 supplemental paid sick leave to which a provider is entitled pursuant to subparagraph (A) or (B) shall be determined on the first day that the provider uses COVID-19 supplemental paid sick leave under this section and shall be in addition to any paid sick leave that may be available to the provider under Section 246.

(D) A provider may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the provider is entitled pursuant to subparagraph (A) or (B). The COVID-19 supplemental paid sick leave is available for immediate use by the provider, and the provider shall inform the recipient of the need to take sick leave and submit a sick leave claim to the county consistent with established procedures in that county.

(E) A provider is not entitled to more than the total number of hours of COVID-19 supplemental paid sick leave to which the provider is entitled pursuant to subparagraph (A) or (B).

(3) Each hour of COVID-19 supplemental paid sick leave shall be compensated at the regular rate of pay to which the provider would be entitled if the provider had been scheduled to work those hours pursuant to existing law or an applicable collective bargaining agreement.

(4) A provider shall not be required to use any other paid or unpaid leave before the provider uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

(c) Notwithstanding subdivision (b), if a provider takes paid leave on or after April 1, 2021, that is payable for the reasons listed in paragraph (1) of subdivision (b) that compensates the provider in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the provider is entitled as set forth under paragraph (3) of subdivision (b), the hours of the other paid benefit or leave may be counted towards the total number of hours of COVID-19 supplemental paid sick leave to which the provider is entitled under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental benefit for leave taken that may be counted does not include paid sick leave to which the provider may be entitled to under Section 246, but may include paid leave provided by any federal or local law that becomes effective on or after April 1, 2021, if the paid leave is provided to the provider under that law for any of the same reasons set forth in paragraph (1) of subdivision (b).

(d) (1) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section shall take effect 10 days after the date of enactment of this section, at which time the entitlements shall apply retroactively to January 1, 2021.

(2) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section applies retroactively to January 1, 2021.

(A) For any such leave taken, if the provider was not compensated in an amount equal to or greater than the amount of compensation for COVID-19

supplemental paid sick leave to which the provider is entitled as set forth under paragraph (3) of subdivision (b), then the provider shall be entitled to a retroactive payment that provides for such compensation.

(B) For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the provider is entitled to under paragraph (2) of subdivision (b).

(C) The COVID-19 supplemental paid sick leave provided under this section is in addition to any unused sick leave benefits put in place by the federal Family First Coronavirus Response Act (Public Law 116-127), which a provider may still use until March 31, 2021.

(e) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section shall remain in effect through September 30, 2021, except that a provider taking COVID-19 supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 supplemental paid sick leave to which the provider otherwise would have been entitled under this section.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(g) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services and the State Department of Health Care Services may implement, interpret, or make specific this section by means of all-county letters or similar instructions, without taking any regulatory action.

SEC. 3. The sum of \$100,000 is hereby appropriated from the General Fund to the Labor Commissioner for staffing resources to implement and enforce the provisions related to the COVID-19 supplemental paid sick leave in this act.

SEC. 4. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

O



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Steve Delaney, Chief Executive Officer  
**SUBJECT:** **DISCOVERY OF ERRONEOUS CALCULATION OF FINAL AVERAGE SALARY FOR FULL-TIME MEMBERS WITH LESS THAN THREE YEARS OCERS SERVICE AND PART-TIME MEMBERS**

---

### Presentation

#### Background/Discussion

OCERS management has determined that the calculation we have used to determine Final Average Salary, a component of the retirement benefit calculation (Years of Service x Factor [2.7%, 3.0%, etc.] x Final Average Salary) for full-time members with less than three years of OCERS credited service and part-time members regardless of years of OCERS credited service is in error and must be corrected.

#### CALCULATING FINAL AVERAGE SALARY

An OCERS Administrative Procedure (OAP) explains the calculation of Final Average Salary for both Legacy and PEPRAs members:

<https://www.ocers.org/sites/main/files/file-attachments/finalaveragesalaryoap.pdf?1550791027>

The OAP specifically lists “true overtime” among a number of other pay items that are excluded from the “compensation earnable” (for Legacy members) and “pensionable compensation” (for PEPRAs members) used to calculate Final Average Salary. However, in discussing part-time members and full-time members with less than three years of OCERS credited service, the OAP states in part:

If a member is a part-time employee or a full-time employee with less than 1 year of service (Tier 1) or 3 years of service (Tier 2), then the FAS is calculated using the member’s **Gross Salary**. The member’s sum of Gross Salary is divided by the number of months of service credited in OCERS and multiplied by 12. (Emphasis added.)

OCERS has through the years consistently interpreted CERL sections 31462 (applicable to Legacy members) and 31462.05 (applicable to PEPRAs members), and CERL section 31462.2 (applicable to part-time Legacy and PEPRAs members), as providing a windfall to what was otherwise a statutory prohibition against including “true overtime” (among other otherwise non-pensionable pay items) in a member’s Final Average Salary calculation.

Section 31462(a) states in part “[i]f a member has less than three years of service, his or her final compensation shall be determined by dividing his or her **total compensation** by the number of months of service credited to him or her and multiplying by 12.” (Emphasis added.) Similarly, section 31462.05(b) says “[i]f a member has less than three years of service, that member’s final compensation shall be determined by dividing the **total compensation** by the number of months of service credited to the member and multiplying by 12. (Emphasis added.)

Section 31462.2(a) says “[f]inal compensation’ for members whose service is on a tenure that is temporary, seasonal, intermittent, or for part time only means one-third of the **total compensation** earned for that period of time during which the member rendered the equivalent of three years of full-time service.” (Emphasis added.)

In 2004 OCERS legal staff approved a pre-existing practice that defined “total compensation” in the CERL sections quoted above as “Gross Salary” when determining Final Average Salary for part-time members regardless of the number of years of OCERS credited service and full-time members with less than three years of OCERS credited service. “Gross Salary” included all payments reported by the employer in a member’s “Gross Salary”, including “true overtime”. In other words, shorter-tenured employees similarly situated to longer-tenured employees (and part-time employees similarly situated to full-time employees) would receive a higher retirement allowance that included the value of all their compensation for overtime and other otherwise non-pensionable pay items despite the fact that no employer or employee retirement contributions would have been collected on such non-pensionable compensation.

OCERS included this interpretation of the law in the plan definitions on the OCERS website, in our website benefit estimator, and in the Final Average Salary OAP cited above.

A number of recent developments brought this issue to the fore, and the OCERS legal team, in consultation with the Board’s Fiduciary Counsel, now advise that this interpretation of “total compensation” as used in CERL sections 31462, 31462.05 and 31462.2 is in error and should be corrected.

## **ALAMEDA**

The Supreme Court’s 2020 decision in the ALAMEDA case has focused a spotlight on the inclusion of overtime hours – pay for services rendered outside normal working hours. If overtime is a part of a member’s “normal working hours”, those overtime hours can continue to be included in the Final Average Salary; but as we learned in this past year, no OCERS employer has yet been able to document the use of overtime in that manner. Instead, overtime has been to-date deemed “true overtime”,

which as noted in the OAP is excluded from Final Average Salary. While not directly applicable to this issue of determining Final Average Salary for part-time members and full-time members with less than three years of OCERS credited service, the decision in ALAMEDA suggested that OCERS should evaluate all uses of overtime, or other similar “gross salary” pay items.

### **RECENTLY TRANSFERRED FIREFIGHTERS POISED TO RETIRE EARLY**

The determination to change our previous interpretation of “total compensation” has been primarily driven by a situation that recently arose with the Orange County Fire Authority (OCFA). As you may be aware, in 2019 the City of Garden Grove merged its fire department, previously under CalPERS benefit coverage, with OCFA. From that date forward, these firefighters began to earn service credit in OCERS.

An OCFA representative reached out to OCERS in the last week of December, having learned that a number of OCFA’s recently acquired Garden Grove employees, because of prior reciprocal service with CalPERS, were planning to retire as of December 31, 2021. OCFA’s concern was that these individuals were choosing to retire sooner than originally planned in order to take advantage of how OCERS was calculating Final Average Salary for members with less than three years of OCERS credited service at the time of retirement. Having conferred with a private sector labor attorney who disagreed with how OCERS was interpreting the law, OCFA asked for an opportunity for its attorney to speak with the OCERS legal team in the hope of demonstrating what they believed to be the correct reading of the statute -- one that would disallow the windfall for shorter-tenured employees.

Prior to such a meeting, OCERS management and legal staff, in consultation with Fiduciary Counsel, determined that OCERS had been misinterpreting the phrase “total compensation” as used in CERL sections 31462, 31462.05 and 31462.2.

On Wednesday, December 29, after first informing OCERS Board Chair Dewane and OCERS 2022 Board Chair Eley, I contacted OCFA and informed them that OCERS was immediately changing its prior interpretation of “total compensation” and would not be including pay items other than those meeting the definition of “compensation earnable” (for Legacy members) or “pensionable compensation” (for PEPRA members) in any Final Average Salary calculation.

That same day Assistant CEO, Suzanne Jenike, had the painful task of calling three OCFA firefighter members who were planning to retire just two days later, and informing them of OCERS’ prior error. She had to inform each member that rather than receiving a benefit based on an inflated Final Average Salary figure which included overtime, as well as any other “Gross Salary” components not normally included in “compensation earnable”, as they had been previously informed, if they still chose to retire on December 31, they would instead receive a benefit based on the lower Final Average Salary figure based on “compensation earnable”.

## TWO GOVERNANCE PROCESSES REQUIRE ATTENTION

### ***Responding to Trustee Queries***

The unfortunate delay in coming to this realization that OCERS had been misinterpreting the above-mentioned CERL sections also requires my attention as OCERS CEO. To his credit, Trustee Jeremy Vallone, having learned of his fellow firefighters' determination to retire in order to take advantage of an inflated Final Average Salary, reached out to OCERS over the past months to assure himself that what these members were being told by OCERS was correct. He did not believe that this process of including "true overtime" and other otherwise non-pensionable pay items in Final Average Salary could be proper. Posing his questions from various angles, and on numerous occasions, he received the same response each time from staff – OCERS would use "total compensation" – that is, Gross Salary -- in the calculation of these member's Final Average Salary. Trustee Vallone was ultimately right, and we were wrong.

Why didn't the incessant questioning by one of our own trustees, incredulous that OCERS could be making this determination, raise a red flag for us earlier? Why did it take a participating employer with questioning attorneys to cause us to really think hard about our multi-decade approach? That is on us. The OCERS management team will need to step back, look to our due diligence processes, and ensure that every time a question is raised by a Trustee or similar stakeholder party as to the accuracy of an existing policy or procedure, or whenever a member of our OCERS team sees a situation that just doesn't seem logical, it is given serious, thoughtful, consideration.

### ***Determining What Other Long Term Process Determinations Might Still Need to be Corrected?***

While informing the Chair, Vice Chair and later the Immediate Past Chair of this change in direction, a common question was how can OCERS management ensure that there aren't other erroneous statutory interpretations guiding other current OCERS processes?

We will need to audit our processes and our participating employers' reporting of pay codes in a manner similar to the approach taken in 2020 when all pay items were reviewed for eligibility for inclusion in Final Average Salary. That process greatly reduced if not eliminated the possibility of some obscure pay item later arising as disallowed, something we had encountered on a number of occasions prior to that effort.

Additionally, I do believe our work to implement robotic process automation (RPA) and other forms of Artificial Intelligence as part of our Vision 2030 goal will help identify and eliminate erroneous process applications such as this.

**WHAT DOES THE OCERS BOARD OF RETIREMENT NEED TO DO AT THIS TIME?**

No action by the Board is presently required.

OCERS staff will continue to determine what members are impacted, whether presently retired or still active, and at a later date will return to have the Board consider its options.

Additionally, it is probable that the Board will be considering this issue in the appeal process.

**Submitted by:**



**SD - Approved**

---

Steve Delaney  
Chief Executive Officer

2011



# Final Average Salary

Steve Delaney, CEO  
January 18, 2022



## **OCERS Staff recently discovered an error with the calculation of final average salary for a specific set of members:**

- Full-time member less than 3 years of service
- Part-time members

FAS captured “total compensation” instead of total compensation earnable. Potential for significantly overstated FAS.



## Details

FAS using “total compensation” = \$23,000 FAS  
Results:  $\$23,000 \times 2.5\% \times 2 \text{ years} =$   
 $\$1,150/\text{month}$

FAS using total compensation earnable =  
\$12,000 FAS  
Results:  $\$12,000 \times 2.5\% \times 2 = \$600/\text{month}$

# QUESTIONS?





## Memorandum

---

**DATE:** January 5, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Steve Delaney, Chief Executive Officer  
**SUBJECT:** 2021 OCERS INNOVATIONS AND PROCESS IMPROVEMENTS

---

### Presentation

#### Background/Discussion

At the start of each calendar year your OCERS team proudly reports on the innovations and process improvements that have been undertaken at OCERS over the prior calendar year. The OCERS management team emphasizes the importance of always striving to improve the services we render to our thousands of members.

I include links here to two great contrasting articles that address the importance of innovation in public agencies such as OCERS:

The first suggests that government, just like private sector, can have break through innovative moments:

Break Through Innovation - [https://ssir.org/articles/entry/unleashing\\_breakthrough\\_innovation\\_in\\_government](https://ssir.org/articles/entry/unleashing_breakthrough_innovation_in_government)

The second is what we see more of, slow continuous change that is termed here "slow growth innovation":

Slow Growth Innovation - <https://www.newamerica.org/weekly/effective-government-innovation-facebook/>

The key is to always encourage that mindset of continuous improvement, and innovative thinking.

The Government Finance Officers Association (GFOA) has commented on the value of maintaining an innovative outlook in government with a word of caution:

*"Local governments need to worry more about creating and sustaining an innovation-friendly administrative environment than about attempting innovations because they are in vogue somewhere else. A new fad is not necessarily what will work well for your specific organization. When Peters and Waterman described how their organizations brought about innovations, they found that these companies created the right atmosphere and conditions to allow innovative thinking to flourish."*

When implementing innovation and improving processes at OCERS, it's not about doing more with less; it's about doing better with the resources we have. We are not looking for complex strategies, which often add confusion; instead we look to make straightforward simple change and improvement that creates better results.

The innovations and process improvements that were implemented this past year required the assistance of the entire OCERS team, and on January 18 you will hear from OCERS' management as they share details of some of the key efforts that were made in 2021.

Submitted by:



**SD - Approved**

---

Steve Delaney  
Chief Executive Officer



# **2021 OCERS Innovations and Process Improvements**

**January 18, 2022**



## 100% Accuracy

- **Organizational Changes**
  - Addition of multilayer QA process, dedicated call center representatives.
- **Overhaul of the Final Average Salary calculation process**
  - Automation through macros, links to procedures, locked formulas.
- **Enhancement of the payroll log**
- **Upgrade of CLEAR/Death Match Process**
  - Vendor to verify initial data and pass to OCERS once information is confirmed.



# Administration Improvements

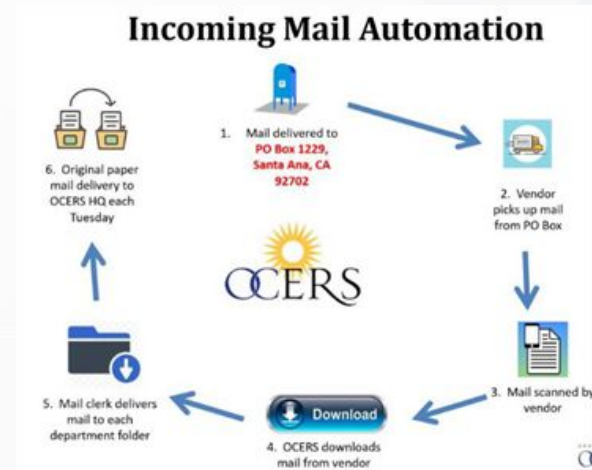
## Outsourcing of Mail

Incoming USPS mail scanned by a vendor and electronically routed to OCERS Team Members:

- Saves time for mail processing
- Improves Disaster Recovery/Business Continuity Plan

## Streamlined Process for Medical Records related to Disability Retirement applications

- Eliminated the chronological list of medical records – should result in significant reduction in processing time
- Expanded the use of a copy service to expedite retrieval of medical records







# Administration Improvements

## NLL (Next Level Leadership) program

- Agency-wide program to develop next generation supervisors and managers
- Competitive internal application process
- Develop multi-dimensional leadership competencies – customized to OCERS
- Real-time skills application period
- 1<sup>st</sup> pilot program resulted in successfully filling the Retirement Benefits Program Supervisor



Rafael Lopez

"The Next Level Leadership program really helped me develop and apply the skills that make an effective leader."



Sandy Guevara

"The NLL program taught me that there is always room for developing and strengthening leadership skills. Be patient, motivating and encouraging. 'An open mind is a beautiful mind.'"



David Acuna

"I'm so glad I took the opportunity to apply for the NLL program. The things I learned were invaluable and I know they'll be applicable throughout my career moving forward."





## Cost Savings / Risk Reductions

### Private Equity Co-Investments

- Investments into direct deals sponsored by existing General Partners
- Designed to significantly reduce management fees and performance carry
- Allocation of 10% of annual private equity capital commitments

### New Records Management Program

- Comprehensive OCERS-wide program
- Clear roles and responsibilities to ensure compliance
- Electronic mail auto-destruction after two years

### Outsourcing Check Printing

- All retiree payments processed remotely
- Improves Business Continuity/Disaster Recovery plan



# Enhanced Security



## Secure Messaging

- Enables OCERS to send sensitive information via email over an encrypted channel
- Provides end-to-end security from the sender all the way through to the recipient
- Easy to use functionality embedded directly within Microsoft Outlook



## Privileged Access Management

- Implemented a privileged access management system to protect administrator-level accounts
- Enforces automatic password complexity, rotation, and uniqueness for administrative accounts
- All administrator session activity is recorded for auditing and forensic purposes



## Integrated Incident Response Program

- Developed an incident response program as a guideline for managing cybersecurity events
- Enables OCERS to respond to cybersecurity incidents efficiently while minimizing impact to business
- Includes playbooks for common cybersecurity incident scenarios



# Continuous Improvement Suggestions Thought Leaders

Mark Adviento

Vincent Durigon

Rose Bowen

Gema Garcia

Jayne Ritchey

Erika Gonzalez

Brittany Cleberg

Dena Gunsolley

Megan Cortez

David Kim

Lisa D'Aiello

Christopher Rubio

Barbara Fields

Jenny Sadoski



**Thank You!**



## Memorandum

---

DATE: January 18, 2022  
TO: Members of the Board of Retirement  
FROM: Steve Delaney, Chief Executive Officer  
SUBJECT: **COVID-19 UPDATE**

---

### **Presentation**

The OCERS staff continues to do a great job meeting the COVID-19 challenge and ensuring that our members receive the services they expect as we fulfil this agency's mission. Rather than provide you with a written report of the agency status prior to the Tuesday, January 18<sup>th</sup> meeting of the OCERS Board of Retirement, I will instead provide a verbal update of plan status and challenges at that time. This recognizes the fact that issues impacted by COVID-19 seem to change daily.

### Submitted by:



**SD - Approved**

Steve Delaney  
Chief Executive Officer

*Orange County Employees Retirement System  
Retirement Board Meeting  
January 18, 2022  
Application Notices*

| <b>Member Name</b>                  | <b>Agency/Employer</b>             | <b>Retirement Date</b> |
|-------------------------------------|------------------------------------|------------------------|
| <b>Anderson, Carol</b>              | Superior Court                     | 11/5/2021              |
| <b>Applebaum, Leonard</b>           | Child Support Services             | 11/20/2021             |
| <b>Athas, Dianna</b>                | Public Defender                    | 11/19/2021             |
| <b>Baca, Conrad</b>                 | OCTA                               | 11/1/2021              |
| <b>Barcenas-Cabrera, Marisela</b>   | Health Care Agency                 | 10/8/2021              |
| <b>Batina, Sandra</b>               | Superior Court                     | 11/19/2021             |
| <b>Blinstrub, Matthew</b>           | OC Public Works                    | 11/16/2021             |
| <b>Bretz, Kurt</b>                  | Assessor                           | 11/19/2021             |
| <b>Cao, Andrea</b>                  | Social Services Agency             | 10/8/2021              |
| <b>Chilecki, Dana</b>               | Sheriff's Dept                     | 11/5/2021              |
| <b>Ciafone, Robin</b>               | Health Care Agency                 | 11/5/2021              |
| <b>Cocking, Paul</b>                | Treasurer - Tax Collector          | 11/10/2021             |
| <b>Coleman, Sherrie</b>             | Probation                          | 11/5/2021              |
| <b>Condaras, Nicolas</b>            | Sheriff's Dept                     | 11/5/2021              |
| <b>Covarrubias, Jose</b>            | OCTA                               | 11/21/2021             |
| <b>Denk, Jeffrey</b>                | OCTA                               | 11/7/2021              |
| <b>Denny, Mark</b>                  | County Executive Office (CEO)      | 11/15/2021             |
| <b>Flores, Agustín</b>              | Sheriff's Dept                     | 10/28/2021             |
| <b>Flores, Richard</b>              | John Wayne Airport                 | 11/5/2021              |
| <b>Gallagher, Gina</b>              | OCTA                               | 9/9/2021               |
| <b>Gaytan Almenara, Cynthia</b>     | Social Services Agency             | 11/5/2021              |
| <b>Gonzales, Cipriano</b>           | OCTA                               | 11/7/2021              |
| <b>Hagerty, Wanda</b>               | Sanitation District                | 11/17/2021             |
| <b>Harden, Jocelyn</b>              | Probation                          | 11/1/2021              |
| <b>Harvey, Rosemary</b>             | OCTA                               | 10/2/2021              |
| <b>Howard, Charlotta</b>            | Health Care Agency                 | 10/6/2021              |
| <b>Jefferson Synthia</b>            | Probation                          | 11/23/2021             |
| <b>Jones, Kimberly</b>              | OC Community Resources             | 10/29/2021             |
| <b>Knowles, Gary</b>                | OCTA                               | 11/7/2021              |
| <b>Le-Pho, Bachtuyet</b>            | Social Services Agency             | 11/5/2021              |
| <b>Liu, Mui</b>                     | OC Community Resources             | 11/5/2021              |
| <b>Lore, Angela</b>                 | Sheriff's Dept                     | 11/5/2021              |
| <b>Martinez, Dianne</b>             | Human Resources Dept               | 11/5/2021              |
| <b>Napoles Loreto, Luz</b>          | In-Home Supportive Services (IHSS) | 10/31/2021             |
| <b>New, Susan</b>                   | Superior Court                     | 11/5/2021              |
| <b>Norombaba Petersen, Jeanette</b> | Social Services Agency             | 11/9/2021              |
| <b>Palmquist, Jennifer</b>          | Probation                          | 11/19/2021             |
| <b>Peck, Andrew</b>                 | Sheriff's Dept                     | 7/1/2021               |
| <b>Potter, Adam</b>                 | Sheriff's Dept                     | 7/17/2021              |
| <b>Raymundo, Jesse</b>              | Sheriff's Dept                     | 11/13/2021             |
| <b>Rios, Isabel</b>                 | OC Waste & Recycling               | 9/24/2021              |
| <b>Rivers, Robert</b>               | Auditor Controller                 | 11/14/2021             |
| <b>Romero, Jeffrey</b>              | City of San Juan Capistrano        | 11/15/2021             |
| <b>Rondinella, Barry</b>            | John Wayne Airport                 | 11/19/2021             |
| <b>Rose, John</b>                   | District Attorney                  | 11/5/2021              |
| <b>Saunders, Kimberly</b>           | Probation                          | 10/22/2021             |
| <b>Sickles, Robert</b>              | OCTA                               | 11/21/2021             |
| <b>Smith, Craig</b>                 | Superior Court                     | 10/8/2021              |
| <b>Smith, Donna</b>                 | Health Care Agency                 | 11/5/2021              |

| <b><i>Member Name</i></b>   | <b><i>Agency/Employer</i></b> | <b><i>Retirement Date</i></b> |
|-----------------------------|-------------------------------|-------------------------------|
| <b>Sterling, James</b>      | OCTA                          | 11/7/2021                     |
| <b>Teschner, Mariane</b>    | John Wayne Airport            | 11/5/2021                     |
| <b>Thai, Le</b>             | Superior Court                | 11/5/2021                     |
| <b>Tietz, Tim</b>           | OCTA                          | 11/2/2021                     |
| <b>Tiliaia, Rosanna</b>     | OC Community Resources        | 11/19/2021                    |
| <b>Wallin, Laura</b>        | Health Care Agency            | 10/26/2021                    |
| <b>Williams, William</b>    | OCTA                          | 10/4/2021                     |
| <b>Winterbottom, Steven</b> | OCTA                          | 11/4/2021                     |
| <b>Wolf, David Glenn</b>    | Fire Authority (OCFA)         | 11/19/2021                    |
| <b>Zeissner, Carol</b>      | OC Public Works               | 11/19/2021                    |



*Orange County Employees Retirement  
Retirement Board Meeting  
January 18, 2022  
Death Notices*

| <b>Active Members</b>           | <b>Agency/Employer</b> |
|---------------------------------|------------------------|
| <b>Alvarez, Aldo</b>            | Child Support Services |
| <b>Aplin, Christina</b>         | Public Defender        |
| <b>Lindsay, Richard</b>         | OC Public Works        |
| <b>Marquis-Rodriguez, Nancy</b> | Public Defender        |
| <b>Martinez, Frank</b>          | Sheriff's Dept         |

| <b>Retired Members</b>          | <b>Agency/Employer</b>        |
|---------------------------------|-------------------------------|
| <b>Adams, William</b>           | OC Public Works               |
| <b>Andritch, Mary</b>           | County Clerk/Recorder         |
| <b>Balmer, Sherlyn</b>          | Public Defender               |
| <b>Beatty, Michael</b>          | Probation                     |
| <b>Bournival, Pamela</b>        | OCTA                          |
| <b>Carpenter, John</b>          | Sheriff's Dept                |
| <b>Conner, Kingsbury</b>        | District Attorney             |
| <b>Cotten, Carol Sue</b>        | Superior Court                |
| <b>Curtis, Mary</b>             | Child Support Services        |
| <b>Davidson, Alvin</b>          | County Executive Office (CEO) |
| <b>Edman, Jan</b>               | OCTA                          |
| <b>Fanning, Diane</b>           | Social Services Agency        |
| <b>Ferdig, Raymond</b>          | OC Public Works               |
| <b>Ferl, Donald</b>             | Sanitation District           |
| <b>Ferm, Bruce</b>              | Sheriff's Dept                |
| <b>Fernandez-Vasquez, Luisa</b> | Social Services Agency        |
| <b>Fontanilla, Ronald</b>       | Probation                     |
| <b>Gall, Robert</b>             | Probation                     |
| <b>Geroch, Joan</b>             | Clerk of the Board            |
| <b>Goode, Robert</b>            | District Attorney             |
| <b>Grifo, Anthony</b>           | Health Care Agency            |
| <b>Jones, Robbin</b>            | OCTA                          |
| <b>Magee, Nancy</b>             | Social Services Agency        |
| <b>Malone, Sharon</b>           | County Executive Office (CEO) |
| <b>McCarthy, Joyce</b>          | OC Public Works               |
| <b>McDonald, Roxanne</b>        | District Attorney             |
| <b>McLemore, James</b>          | Sheriff's Dept                |
| <b>Miniaci, Michael</b>         | OC Community Resources        |
| <b>Mirakian, Armen</b>          | District Attorney             |
| <b>Morrissey, William</b>       | District Attorney             |
| <b>Oblena, Roman</b>            | Superior Court                |
| <b>Pickens, Robert</b>          | OCTA                          |
| <b>Ramos, Raul</b>              | Sheriff's Dept                |
| <b>Ramos, Raul</b>              | Sheriff's Dept                |

|                            |                       |
|----------------------------|-----------------------|
| <b>Reinig, Jeffrey</b>     | Fire Authority (OCFA) |
| <b>Rouzaud, Vincent</b>    | OCTA                  |
| <b>Row, Theresa</b>        | Assessor              |
| <b>Sirota, Robert</b>      | Probation             |
| <b>The, Hwie-ing</b>       | OC Public Works       |
| <b>Trakarian, Lou Anne</b> | Superior Court        |
| <b>Trunk, Kathleen</b>     | Health Care Agency    |
| <b>Udeck, Edward</b>       | Probation             |
| <b>Vu, David</b>           | Health Care Agency    |
| <b>Whitcomb, Howard</b>    | Assessor              |
| <b>Yazdi, Manuchehr</b>    | Auditor Controller    |
| <b>Zaun, Elizabeth</b>     | Superior Court        |
| <b>Zuccollo, Silvino</b>   | Sanitation District   |

|                                 |  |
|---------------------------------|--|
| <b><i>Surviving Spouses</i></b> |  |
| <b>Cunningham, Katsu</b>        |  |
| <b>Gittelman, Lucia</b>         |  |
| <b>Mc Carty, Michael</b>        |  |
| <b>Pniewski, Anthony</b>        |  |

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

**AUDIT COMMITTEE MEETING  
October 4, 2021  
9:30 a.m.**

**MINUTES**

**OPEN SESSION**

The Chair called the meeting to order at 9:35 pm.

Attendance was as follows:

Present via Zoom Video conference pursuant to Government Code § 54953, as amended by AB 361:

Frank Eley, Chair; Shari Freidenrich; Charles Packard; Jeremy Vallone

Also Present via Zoom:

David Kim, Director of Internal Audit; Steve Delaney, Chief Executive Officer; Gina Ratto, General Counsel; Brenda Shott, Assistant CEO, Internal Operations; Suzanne Jenike, Assistant CEO, External Operations; Jeff Lamberson, Director of Member Services; Jenny Sadoski, Director of Information Technology; Mark Adviento, Internal Auditor; Sonal Sharma-Beeson, Recording Secretary; Anthony Beltran, Audio Visual Technician.

**PUBLIC COMMENT**

None.

**COMMITTEE FINDINGS PURSUANT TO GOVERNMENT CODE § 54953, AS AMENDED BY AB 361**

*Presentation by Gina Ratto, General Counsel, OCERS*

**Recommendation:** The Committee is asked to make the following findings (a majority vote is required):

- (1) The Committee has reconsidered the circumstances of the state of emergency; and
- (2) The Committee has determined that one or both of the following circumstances exist:
  - a. The state of emergency continues to directly impact the ability of the members of the Committee to meet safely in person; and/or
  - b. State or local officials continue to impose or recommend measures to promote social distancing.

**MOTION** by Packard, **seconded** by Freidenrich, to approve staff recommendation.

The Committee discussed the AB 361 Resolution and during the course of that discussion considered whether the following paragraph of the Resolution could be deleted:

Audit Committee Meeting  
October 4, 2021

“WHEREAS, the Audit Committee does hereby find that the COVID-19 pandemic, the current local case rate indicating high community transmission, and the lack of adequate space to promote safe social distancing of a large number of attendees have caused, and will continue to cause, conditions of peril to the safety of persons that are likely to be beyond the control of services, personnel, equipment, and facilities of OCERS.”

And the following edit could be made to the next paragraph:

“WHEREAS, ~~in making the aforementioned findings,~~ the Audit Committee acknowledges the proclamation of State of Emergency by the Governor of the State of California; the proclamation of Local Health Emergency by the County of Orange Health Officer; the proclamation of a Local Emergency by the Chairwoman of the Orange County Board of Supervisors; and the ratification of the Local Health Emergency and Local Emergency by the Orange County Board of Supervisors; as well as CalOSHA’s prevention Emergency Temporary Standards requiring any employee not wearing a face covering to be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19; the County of Orange Health Officer’s Orders and Strong Recommendations for unvaccinated persons to avoid gathering and practice social distancing; and the CDC’s recommendation for maintaining physical distance and avoiding crowds; and”

Further, the Committee discussed the following revision to Section 5 of the Resolution:

“Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of November 3, 2021, or such time the Audit Committee or the OCERS Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend ~~or terminate~~ the time during which the Audit Committee and/or other legislative bodies of OCERS may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.”

The maker of the **MOTION**, Charles Packard, **AMENDED THE MOTION** to include the aforementioned edits and further to attach to the Resolution a copy of (i) AB 361, (ii) the State and County declarations and proclamations referenced in the Resolution, and (iii) the various guidance issued by the CDC, CalOSHA, and the County and referenced in the Resolution.

The seconder to the MOTION, Shari Freidenrich, accepted the amendments to the Motion.

The **MOTION, AS AMENDED**, passed **unanimously** with Eley, Freidenrich and Packard voting in favor of the amended motion and Vallone absent.

*The Committee recessed to break at 10:21am*

*The Committee resumed at 10:32am*

#### **C-1 APPROVE AUDIT COMMITTEE MEETING MINUTES**

Audit Committee Meeting Minutes

June 4, 2021

**MOTION** by Packard, **seconded** by Freidenrich, to approve the Minutes.

Audit Committee Meeting  
October 4, 2021

The motion passed **unanimously**.

**A-2 PRIVATE EQUITY CONSULTANT AUDIT**

*Presentation by David Kim, Director of Internal Audit and Mark Adviento, Internal Auditor*

**Recommendation:** Receive and file.

**MOTION** was made by Freidenrich, **seconded** by Packard to approve staff recommendation.

The motion passed **unanimously**.

**A-3 SURVIVOR PAYMENTS AND DEPENDENT ELIGIBILITY AUDIT**

*Presentation by David Kim, Director of Internal Audit*

*Mr. Vallone joined the meeting.*

**Recommendation:** Receive and file.

**MOTION** was made by Packard, **seconded** by Freidenrich to approve staff recommendation.

The motion passed **unanimously**.

*The Committee recessed to break at 10:56am.*

*The Committee resumed at 11:02am.*

**A-5 HOTLINE UPDATE**

*Presentation by David Kim, Director of Internal Audit*

**Recommendation:** Receive and file.

**MOTION** was made by Packard, **seconded** by Vallone to approve staff recommendation.

The motion passed **unanimously**.

**R-1 MANAGEMENT ACTION PLAN VERIFICATION**

*Written Report*

**R-2 STATUS UPDATE OF 2021 AUDIT PLAN**

*Written Report*

**A-4 CONTINUOUS AUDIT OF FINAL AVERAGE SALARY CALCULATIONS (Q3 2021)**

*Presentation by David Kim, Director of Internal Audit*

**MOTION** was made by Packard, **seconded** by Freidenrich to approve staff recommendation.

The motion passed **unanimously**.

Audit Committee Meeting  
October 4, 2021

*The Committee recessed into Closed Session at 11:36 am.  
The Committee resumed at 12:36 pm.*

**E-1 THREAT TO PUBLIC SERVICES OR FACILITIES (GOVERNMENT CODE SECTION 54957)**

Adjourn into Closed Session pursuant to Government Code section 54957 to consult with *Steve Delaney, CEO, Brenda Shott, Asst. CEO; Suzanne Jenike, Asst. CEO; Matthew Eakin, Director of Information Security; Jenny Sadoski, Director of Information Technology; Jon Gossard, Information Security Manager; Gina M. Ratto, General Counsel; and David Kim, Director of Internal Audit*

**Recommendation:** Take appropriate action.

The Audit Committee took no reportable action.

**COMMITTEE MEMBER COMMENTS**

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

Mr. Delaney advised the Committee that the updated and streamlined version of the Director of Internal Audit Performance Evaluation, with input from Ms. Freidenrich, was distributed to the Committee for review. The intent is also to align the timing of the annual evaluation of the Director of Internal Audit with the rest of OCERS management. Mr. Delaney will work with Chair Eley for final approval.

Mr. Kim notified the Committee that Internal Audit has performed initial exploratory work for the Alameda Audit as part of 2022 Internet Audit plan.

Ms. Shott reminded the Committee that staff is in the process of reviewing RFPs for an External Auditor and will provide the Committee the opportunity to interview finalists in 2022.

**COUNSEL COMMENTS**

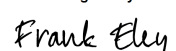
**ADJOURNMENT**

The Chair adjourned the meeting at 12:40 pm.

Submitted by:

DocuSigned by:  
  
C00D5744FE39463  
Steve Delaney  
Secretary to the Board

Approved by:

DocuSigned by:  
  
9F34288D95E2472...  
Frank Eley  
Chair



## Memorandum

---

DATE: January 18, 2022  
TO: Members of the Board of Retirement  
FROM: Steve Delaney, Chief Executive Officer  
SUBJECT: **CEO FUTURE AGENDAS AND 2022 OCERS BOARD WORK PLAN**

---

### Written Report

#### AGENDA TOPICS FOR THE OCERS BOARD OF RETIREMENT

#### FEBRUARY

- 2022 Initial STAR COLA Posting
- Annual Cost of Living Adjustment
- Overpaid And Underpaid Plan Benefits Report
- Policy Compliance Report
- Report Outcome of Prior Year Business Plan

#### MARCH

- CIO Comments
- STAR COLA Final Approval
- GFOA awards
- Quarterly 2022-2024 Strategic Plan Review
- SACRS Election Materials
- Semi Annual Business Continuity Disaster Recovery Updates

#### APRIL

- Annual Fiduciary Training
- Brown Act Training
- CIO Comments
- SACRS Board of Directors Election

#### Submitted by:



**SD - Approved**

Steve Delaney  
Chief Executive Officer





OCERS RETIREMENT BOARD - 2022 Work Plan

|                              | Jan   | Feb                   | Mar   | Apr                                   | May   | Jun  | Jul  | Aug   | Sep (Offsite)                    | Oct  | Nov   | Dec  |
|------------------------------|---|-----------------------|---|---------------------------------------|---|--|--|---|----------------------------------|--|---|--|
| <b>System Oversight</b>      | Receive Quality of Member Services Report (I) | STAR COLA Posting (I) | Approve 2022 STAR COLA (A)                    | SACRS Board of Directors Election (A) | Preliminary December 31, 2021 Valuation (I) | Mid-Year Review of 2022 Business Plan Progress (I)                         | Alt. Invest. Return and Assumption Sensitivity: 20-year Illustration (I) | Review 2nd Quarter Budget to Actuals Financial Report (I) | Strategic Planning Workshop (I)  | Overview of 2023 Administrative Budget and Investment (Workshop) (I) | Review 3rd Quarter Budget to Actuals Financial Report (I) |  |
|                              | Receive OCERS Innovation Report (I)           | Approve 2023 COLA (A) | Quarterly 2022-2024 Strategic Plan Review (A) |                                       |   | Approve December 31, 2021 Actuarial Valuation & Funded Status of OCERS (A) | Actuarial Review: Risk Assessment (I)                                    | Receive OCERS by the Numbers (I)                          | Annual OCERS Employer Review (I) | Approve 2023-2025 Strategic Plan (A)                                 | Approve 2023 Administrative (Operating) Budget (A)        |  |
|                              |   |                       |   |                                       |   | Approve 2021 Comprehensive Annual Financial Report (A)                     | Approve Early Payment Rates for Fiscal Year 2022-24 (A)                  | Receive Evolution of the UAAL (I)                         |                                  | Approve 2023 Business Plan (A)                                       | Annual CEO Performance Review and Compensation (A)        |  |
|                              |   |                       |   |                                       |   | Quarterly 2022-2024 Strategic Plan Review (A)                              |  | Employer & Employee Pension Cost Comparison (I)           |                                  |  |   |  |
|                              |   |                       |   |                                       |   |  |  |   |                                  |  | Adopt 2023 Board Meeting Calendar (A)                     |  |
| <b>Board Governance</b>      |   |                       |   | Brown Act Training (biannual) (I)     |   |  |  | Sexual Harassment Prevention Training (I)                 |                                  |  |   | Adopt Annual Work Plan for 2023 (A)          |
|                              |   |                       |   | Fiduciary Training (I)                |   |  |  |   |                                  |  |   | Vice-Chair Election (A)                      |
|                              |   |                       |   |                                       |   |  |  |   |                                  |  |   | Receive 2023 Board Committee Assignments (A) |
| <b>Regulation / Policies</b> | Communication Policy Fact Sheet (I)           |                       |   |                                       |   |  |  |   |                                  |  |   |  |
|                              |   |                       |   |                                       |   |  |  |   |                                  |  |   |  |
| <b>Compliance</b>            | Status of Board Education Hours for 2021 (I)  |                       |   | Form 700 Due (A)                      |   | Receive Financial Audit (I)  |  |   | State of OCERS (I)               |  |   |  |

(A) = Action (I) = Information



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Jim Doezie, Contracts, Risk and Performance Administrator  
**SUBJECT: QUIET PERIOD – NON-INVESTMENT CONTRACTS**

---

### Written Report Background/Discussion

1. **Quiet Period Policy Guidelines**

The following guidelines established by the Quiet Period Policy, section 3.c, will govern a search process for any contract to be awarded by OCERS:

*“...Board Members and OCERS staff shall not knowingly communicate with any party financially interested in any prospective contract with OCERS regarding the contract, the services to be provided under the contract or the selection process;”*

2. **Quiet Period Guidelines**

In addition, the following language is included in all distributed RFP's:

*“From the date of issuance of this RFP until the selection of one or more respondents is completed and announced, respondents are not permitted to communicate with any OCERS staff member or Board Members regarding this procurement, except through the Point of Contact named herein. Respondents violating the communications prohibition may be disqualified at OCERS’ discretion. Respondents having current business with OCERS must limit their communications to the subject of such business.”*

### **Distributed RFP's**

The RFP's noted below are subject to the quiet period until such time as a contract(s) is finalized.

- An RFP for Financial Auditor Services was distributed in July 2021. This RFP is to put into place a Financial Auditor Agreement as the prior vendor agreement with MGO has expired and cannot be extended. Interviews with the finalists were conducted during the Audit Committee meeting held on December 15 2021. Item A-2 in the Board Meeting Agenda is to address the Audit Committee recommendation for a Financial Auditor vendor.

### Submitted by:

Jim Doezie  
Contracts, Risk and Performance Administrator



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Steve Delaney, Chief Executive Officer  
**SUBJECT:** BOARD COMMUNICATIONS

---

### Written Report

#### Background/Discussion

To ensure that the public has free and open access to those items that could have bearing on the decisions of the Trustees of the Board of Retirement, the OCERS Board has directed that all written communications to the entire Board during the interim between regular Board meetings be included in a monthly communications summary.

#### News Links

The various news and informational articles that have been shared with the full Board are being provided to you here by web link address. By providing the links in this publicly available report, we comply with both the Brown Act public meeting requirements, as well as avoid any copyright issues.

The following news and informational item was provided by staff and the CEO for distribution to the entire Board:

#### Shawn Dewane:

- Vice Chair Dewane shares to show the value to be gained by OCERS in encouraging a growth in CFA certification among staff.  
<https://www.cfainstitute.org/en/about/press-releases/2020/investment-professionals-worldwide-pass-cfa-examinations>

#### Steve Delaney:

- Interesting article relevant to OCERS, especially final comment that even after two years with COVID they don't know what the office of the future might look like.  
<https://www.sacbee.com/news/local/article256373227.html>

#### Robert Kinsler:

- California needs pension reforms more than streetcar projects.  
<https://www.ocregister.com/2021/12/29/california-needs-pension-reforms-more-than-streetcar-projects/>

Attached:

- Interpreting Pandemic-Related Decreases in Life Expectancy
- November Summary

**Submitted by:**



**SD - Approved**

---

Steve Delaney  
Chief Executive Officer

## Key Points

- The Centers for Disease Control and Prevention (CDC) has published provisional life expectancy estimates stating that the average life expectancy of Americans decreased by a year and a half during 2020 primarily due to COVID-19. This statement can be misleading due to the life expectancy measure used by the CDC.
- The CDC uses “period” life expectancy, which assumes that the COVID-19 mortality experience of 2020 would continue for every year in the future. While this measure may be useful for year-over-year comparisons in normal times, it tends to exaggerate the effect of nonrecurring events.
- “Cohort” life expectancy is how most people think about life expectancy, as it is an estimate of the actual number of years that an individual may live, reflecting expected future conditions. The temporary impacts of increased deaths due to COVID-19 in 2020 and into 2021 will have a much smaller effect on cohort life expectancy, as it is assumed that those effects will lessen over time.
- The Actuaries Longevity Illustrator can help individuals estimate how long they might live. Actuaries are well positioned to help bring clarity to understanding of longevity and life expectancy.



AMERICAN ACADEMY of ACTUARIES

*Objective. Independent. Effective.™*

1850 M Street NW, Suite 300  
Washington, DC 20036  
202-223-8196 | [www.actuary.org](http://www.actuary.org)

Craig Hanna, Director of Public Policy  
Linda K. Stone, Senior Pension Fellow

© 2021 American Academy of Actuaries. All rights reserved.

Interpreting Pandemic-Related  
Decreases in Life Expectancy

DECEMBER 2021

The Centers for Disease Control and Prevention (“CDC”) has published provisional life expectancy estimates in its Vital Statistics Surveillance Report<sup>1</sup> that the average life expectancy of Americans decreased by a year and a half during 2020, primarily due to the impact of COVID-19.<sup>2</sup> This development understandably raises concerns because it creates an impression that the average American will live a year and a half less than they otherwise would have due to COVID-19.

But what is “life expectancy”—and does the CDC’s statement really mean what many people think it means?

The CDC report, which is based on deaths during 2020, garnered widespread attention that Americans had lost a year and a half of life expectancy due to the pandemic. A reduction of roughly three years in life expectancy was cited for Black and Hispanic Americans. This decrease in life expectancy follows several years of smaller life expectancy declines (on average), which have run counter to the long-term trend of increases in longevity.

While these changes in life expectancy might seem dramatic, it can be difficult to interpret what this data means. The notion of life expectancy can be confusing because there are different measures of life expectancy that are used in different contexts. It is important to fully understand these measures to interpret the CDC analysis of the data for 2020. The CDC focuses on a hypothetical measure known as “period” life expectancy. While the CDC report does distinguish this measure from the “cohort” life expectancy measure that aligns with the more intuitive understanding of the metric, described below, the CDC’s focus is on changes in period life expectancy that

<sup>1</sup> [Report No. 015](#); Centers for Disease Control and Prevention; July 2021.

<sup>2</sup> CDC publication [Mortality in the United States, 2020](#) includes final statistics for 2020 showing a 1.8-year decline in life expectancy at birth.

were largely driven by the increase in deaths attributable to COVID-19. As discussed below, this focus on period life expectancy can create confusion.

**Period life expectancy**, measured as of a given age, is the remaining number of years that a hypothetical individual can expect to live (on average) if rates of death prevailing during a given period continue indefinitely. When mortality rates increase significantly during a given year—as has been the case during the COVID-19 pandemic—period life expectancy will decline noticeably because it is calculated as if these higher rates of mortality will continue in all future years. This often-cited measure of life expectancy can vary dramatically from one year to the next. The CDC report highlights period life expectancy at birth—the number of years that a newborn would be expected to live if the current pandemic conditions persist throughout the newborn’s entire lifetime.

**Cohort life expectancy** (also known as “generation” life expectancy) considers changes in rates of mortality that are expected to occur in the future. A pandemic or other significant event that has a substantial effect on short-term population mortality but is expected to subside will have a much smaller effect on cohort life expectancy than it does on period life expectancy.

Period life expectancy may be a useful metric for comparing general population mortality experience for different periods of time. Nonetheless, cohort life expectancy is likely what most people envision when thinking about the concept of life expectancy because cohort life expectancy is an estimate of the actual number of years that a typical individual might be expected to live based on reasonable expectations for future conditions. For this reason, cohort life expectancy is the measure used by the Actuaries Longevity Illustrator.<sup>3</sup> Both measures of life expectancy are based on probabilities and capture the average expectation of a large population. A given individual may live many years beyond that average or may die well short of this average expected life span.

This issue brief discusses these concepts, how life expectancies are calculated, how to interpret them, and the limitations of these measures. In developing these concepts, the underlying concepts of mortality rates, mortality (or “life”) tables, and the data used to calculate mortality rates and life expectancy are discussed.

<sup>3</sup> [Actuaries Longevity Illustrator](#); American Academy of Actuaries and Society of Actuaries.

The Pension Committee, which authored this issue brief, includes Elena Black, MAAA, FSA, FCA, EA—*Chairperson*; Grace Lattyak, MAAA, FSA, FCA, EA—*Vice Chairperson*; Michael Antoine, MAAA, FSA, FCA, EA; Michael Bain, MAAA, ASA, FCA, FSPA, EA; Rachel Barnes, MAAA, FSA, FCA, CERA, EA; Margaret Berger, MAAA, FSA, FCA, EA; Maria Carnovale, MAAA, FSA, EA; Jonathan de Lutio, MAAA, EA; C. David Gustafson, MAAA, FSA, FCA, EA; Scott Hittner, MAAA, FSA, FCA, EA; Lloyd Katz, MAAA, FSA, FCA, EA; Maria Kirilenko, MAAA, ASA, FCA, EA; Tonya Manning, MAAA, FSA, FCA, EA; Maria Moliterno, MAAA, ASA, EA; A. Donald Morgan, MAAA, FSA, FCA, EA; James Ritchie, MAAA, ASA, FCA, EA; Mark Shemtob, MAAA, FSA, FCA, EA; Mary Stone, MAAA, FSA, FCA, EA; Todd Tauzer, MAAA, FSA, FCA, CERA; Hal Tepfer, MAAA, FSA, FCA, MSPA, EA;

The committee gratefully acknowledges the contributions of Immediate Past Chairperson Bruce Cadenhead, MAAA, FSA, FCA, EA

## Mortality rates and mortality tables

In the course of their work, actuaries consider and study uncertain events and make assumptions about probabilities of these events occurring. For example, the probability of a person of a given age dying within the next year is what is known as an “age-specific mortality rate.” Another way to look at this is that the estimated likelihood of a person living to the next age is 100% minus this age-specific mortality rate.

In general, a mortality table is composed of age-specific mortality rates for a range of ages, usually from birth to the oldest age to which anyone is expected to survive. These tables are also sometimes called “life tables.”<sup>4</sup> While many actuaries use mortality tables for different populations in the course of their work, life expectancies are not directly used in actuarial practice; rather, they are a separate output of the underlying mortality tables.

## Factors that affect mortality rates

Mortality tables are created by tabulating observed mortality experience data from large populations. It is well established that different populations may experience very different survivorship expectations, based on the population’s characteristics. Many factors can affect mortality rates, several of which are highlighted in this section.

First, by their very construction, mortality tables recognize the obvious factor of age.

Another well-established and well-known factor is gender because, as a group, females tend to live longer than males. Most mortality tables are constructed showing distinct probabilities of death for males and for females.<sup>5</sup>

Other factors that may be reflected by constructing separate tables or by developing other adjustments<sup>6</sup> include socioeconomic status, level of education, race, occupation, health status including body mass index, level of physical activity, smoking status, other lifestyle-related factors, and geography.

<sup>4</sup> For example, the CDC [publishes](#) mortality tables for U.S. population, under the name “Life Tables.”

<sup>5</sup> Although an increasing number of people identify as nonbinary, there is not yet sufficient data available to develop separate rates of mortality for these individuals.

<sup>6</sup> Such adjustments may be achieved by multiplying rates by a factor, or “stepping back or forward” by simply realigning the existing rates with different ages.

## How mortality experience in the U.S. has changed over time

U.S. population mortality rates have generally decreased over time. As mortality rates decrease, longevity and life expectancy increase. Over the past decade, this trend of longevity increases has stalled, with life expectancy at birth virtually unchanged between 2010 and 2018,<sup>7</sup> due largely to the effects of factors such as an increased use of opioids and the prevalence of obesity offsetting the generally positive trend. Meanwhile, more affluent segments of the population have continued to experience increases in life expectancy during this period.<sup>8</sup>

Historically, gains in longevity can be tracked to simple improvements in living conditions, such as the use of clean water and waste removal. More recent factors that resulted in increases in longevity in the U.S. include advances in medicine (for example, the development of antibiotics), expanded access to health care through introduction of Medicare and Medicaid, continual and general improvements in education, health awareness, reduction in smoking rates, and improved standards of living.

Opinions vary among demographers, actuaries, academics, and other professionals who study and analyze mortality and associated trends as to whether the historic longevity improvement trend will resume and, if so, at what pace. In addition, the COVID-19 pandemic has produced at least a temporary dip in the trend of increasing longevity. The long-term consequences of this pandemic on mortality and health status are largely unknown at this time. Some speculate that long-term effects of COVID-19 could continue to increase rates of mortality relative to pre-pandemic levels, while others believe that medical advances driven by the pandemic, such as development of vaccines, could lead to greater improvements in longevity.

## The relationship between mortality rates and life expectancy

The concept of probability is commonly used to quantify unknown and uncertain events. For example, using a mortality table can help a 65-year-old evaluate their chance of celebrating their next birthday. Computing a life expectancy is a statistical process of “collapsing” a series of age-specific survival probabilities into one number that represents the expected number of additional years a person might live.<sup>9</sup>

---

<sup>7</sup> “Changes in Life Expectancy at Birth, 2010–2018”; Centers for Disease Control and Prevention; Jan. 30, 2020

<sup>8</sup> *U.S. Population Mortality Observations—Updated with 2019 Experience*; Society of Actuaries; January 2021.

<sup>9</sup> In other words, this single measure is a sum of the probabilities, derived from the mortality table, of a person of a given age to live to all future ages.



The mathematics behind the calculation of life expectancy uses the concept of “expected value” of a person’s future lifetime. The word “expected” communicates that the computed result is not a *fact*; it’s what is *expected on average*. For example, if an actuary tells you that a 40-year-old has a life expectancy of 41.7 years,<sup>10</sup> it does not mean that the 40-year-old will live to age 81.7 exactly. Some individuals, age 40 today, will die before that age while others will live past that age. But if we tracked the future lifetimes of 100,000 people who are 40 years old today, we would *expect* that upon the recorded death of the last of the group, these 100,000 people will have lived *an average* of 41.7 additional years.

Another issue that may cause confusion is that life expectancy measures for U.S. populations are often reported for the population as a whole, blending many characteristics that influence mortality into a single reported measure. Life expectancy can be reported for a combined population of males and females, covering individuals living in different parts of the country, and reflecting different socioeconomic characteristics.

Yet another complicating feature of this measure is that when reporting life expectancies, many—including the CDC in the report cited above—illustrate these values as of different starting ages. It is common to track life expectancy at birth, as well as at other ages. And, because (for example) a 40-year-old person has already survived from birth to age 40, the 40-year-old’s expected age at death will be higher than the expected age at death for a newborn (or for anyone who is younger than 40), because the life expectancy for a anyone younger than age 40 must also incorporate the possibility that they may not survive to age 40.<sup>11</sup>

The recent attention to the significant decreases in life expectancy reported by CDC focused on the “at birth” period life expectancy measure, but this nuanced distinction may be lost on the general public. When a 65-year-old person hears a “1.5-year decrease in life expectancy,” they may not realize that the reported drop from 78.8 years to 77.3 refers to the “at birth” measure. For a 65-year-old, the CDC’s recent report shows a drop in the period life expectancy of 0.8 years—from 19.6 in 2019<sup>12</sup> to 18.8 in 2020.<sup>13</sup>

10 Using Social Security [Life Expectancy Calculator](#) for a male, age 40 today, utilizing “cohort” life expectancy methodology and Social Security Administration (SSA) assumptions for future male mortality.

11 The term “expected age at death” is used here to avoid confusion over the term “life expectancy,” as it applies to individuals who have already lived a number of years. For example, for a 40-year-old person, the CDC report shows a period life expectancy of an additional 39.6 years, resulting in an expected age at death of 79.6. For newborns, on the other hand, the life expectancy and the expected age at death are the same (77.3).

12 See CDC publication [Mortality in the United States, 2019](#).

13 Note, for example, as reported by CDC for 2019, at birth the life expectancy was 78.8 while for a 65-year-old it was 19.6, resulting in average expected age at death of 84.6—which exceeds 78.8 by 5.8 years—because the 65-year-old already survived the first 65 years of their life.

## Cohort and period life expectancies

The group of 40-year-old people discussed in the previous example is a “cohort” because they were all born in the same year. Computing the life expectancy for a cohort can be done by tracking the group from the time analysis is begun (in this case, age 40) and continuing as the number of years each member of this cohort lives is recorded until the last death of the group is recorded.

If actuaries had a way to peer into the future so that they could observe the actual ages at death for each cohort member, the cohort life expectancy for this group could be calculated as the average of observed life spans. For historical cohorts, such as for those born in 1880 who were alive and age 40 in 1920, average life span may be calculated from historical records.

For a cohort of current 40-year-old people, actuaries routinely use actuarially developed mortality tables to determine the number of years members of this group are expected to live. As discussed earlier, the mortality table is typically developed from experience for a relevant population for a particular period. In using this table to determine life expectancy, this approach assumes that the mortality rates measured in this period apply to all future years.

To estimate period life expectancy in the recent report, the CDC used mortality rates for the general U.S. population for 2020. This means someone who is 40 years old in 2020 is assumed to experience these mortality rates in all future years. In 25 years, for example, when this person is 65, they are assumed to have the same mortality experience as someone who is age 65 in 2020. This methodology of life expectancy calculation is a standard approach that the CDC uses when reporting life expectancy figures, and which is widely cited.

To develop an estimate more aligned with a commonly accepted understanding of how long people alive today are expected to live, this standard approach is refined by incorporating mortality improvement or changes over time into this calculation. Any such projection depends upon the assumption that future mortality rates will change over time. This assumption will have a significant effect on life expectancy.

Period life expectancy measures demonstrate fluctuations that reflect events that influenced mortality in this particular period.<sup>14</sup> For example, the Spanish flu pandemic of 1918 resulted in a dramatic decrease in period life expectancy, which was more than offset by an increase in period life expectancy the next year. A male baby born in 1917 had a period life expectancy of 52.2 years, while a male baby born in 1918 had a period life expectancy of only 45.3 years—a reduction of almost 7 years.<sup>15</sup> The following year, a male newborn had a period life expectancy of 54.2, an increase of almost 9 years over the period life expectancy calculated in 1918 for a newborn male. These changes are much larger than those seen thus far with COVID-19, demonstrating the relative severity of that earlier pandemic relative to the current one.

It is instructive to review the impact of calculating life expectancies on a cohort basis, rather than a period basis, for these three cohorts of male newborns in the late 1910s. Using mortality rates published by the SSA for years after 1917, for a cohort of 1917 male newborns, the average life span was 59.4; for the 1918 cohort, average life span was 60.0; and for 1919, it was 61.5. Even these differences are heavily influenced by the fact that the 1917 and 1918 cohorts had to survive the high rates of death during 1918, while the 1919 cohort did not.

If both period and cohort life expectancy are measured as of 1920 for each of these groups (the 3-year-old children who were born in 1917, 2-year-old children who were born in 1918 and 1-year-old children who were born in 1919), differences are observed in these measures as they narrow substantially because the high rates of mortality during 1918 have no effect on those who survived to 1920. This is summarized in the table below.

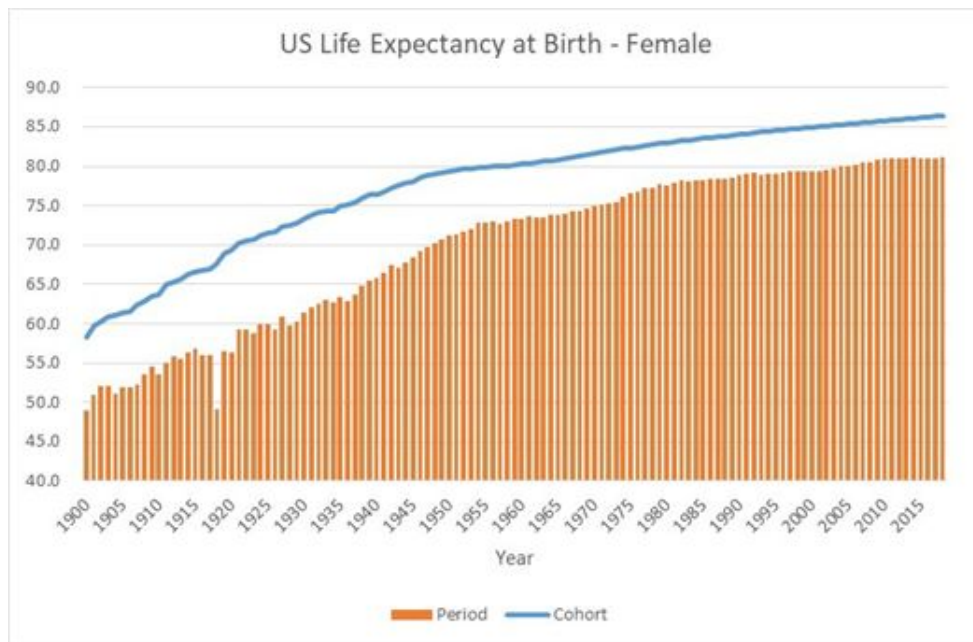
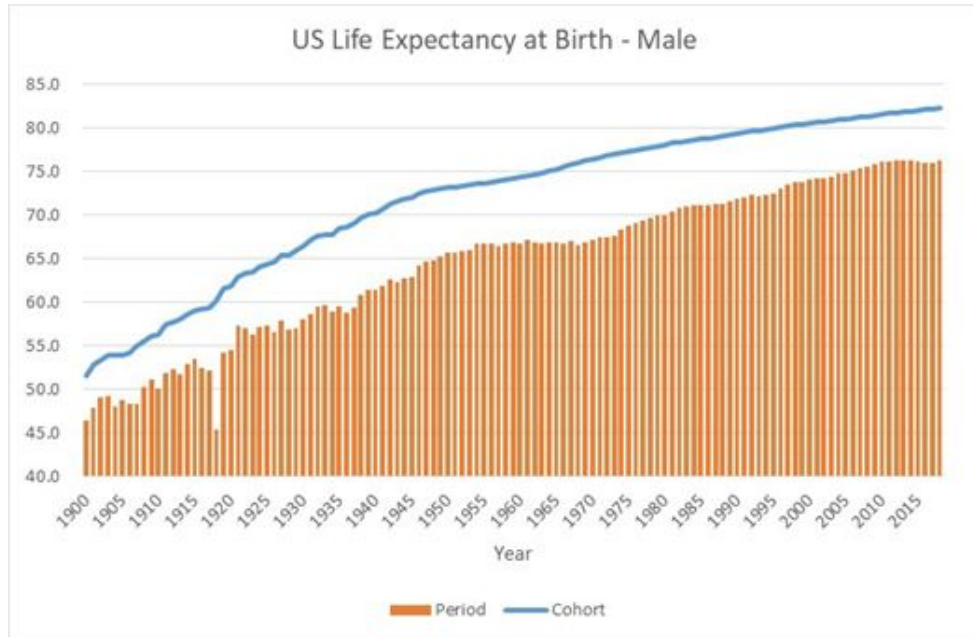
| Year of Birth | Life Expectancy at birth |        | Life expectancy in 1920 |        |
|---------------|--------------------------|--------|-------------------------|--------|
|               | Period                   | Cohort | Period                  | Cohort |
| 1917          | 52.2                     | 59.4   | 58.3                    | 65.3   |
| 1918          | 45.3                     | 60.0   | 58.7                    | 66.0   |
| 1919          | 54.2                     | 61.5   | 58.6                    | 66.2   |

This table, as well as the graphs that follow, use historical and projected U.S. population mortality rates published by Social Security Administration in conjunction with the 2020 Trustees Report.

<sup>14</sup> The federal government began keeping mortality statistics going back to 1900. Data is available from the CDC and SSA going back to that year. Methodologies evolved and changed over time, and those changes as well as the passage of time impacted the results. Due to these differing methodologies, numbers may be significantly different depending on the source.

<sup>15</sup> For these numbers, [historical U.S. population mortality rates](#) published by the Social Security Administration in conjunction with the publication of the 2020 Trustees Report were used.

The graphs below show how both period and cohort life expectancy have changed over time. The significant dip in period life expectancy during 1918 and subsequent recovery during 1919 can be seen in these results, while the annual changes in cohort life expectancy are less volatile. Due to historical and expected future improvements in mortality rates, cohort life expectancy is consistently higher than period life expectancy.



## How not to interpret life expectancy

Life expectancy can be a confusing concept and is often subject to misinterpretation and misunderstanding. An individual may conclude that the expected life span they hear about or read about is a prediction of the exact number of years they can expect to live, and that the CDC's recent report means that they will not survive as long as they may have expected previously. In fact, however, anyone alive in 2021 reading about the CDC report will already have survived the high rates of mortality experienced during 2020.

## How temporary phenomena, such as a pandemic, affect life expectancy measures

The long-term effect of COVID-19 on longevity is as yet unknown. If the effects are temporary and rates of mortality return to pre-pandemic levels and continue to improve in line with historical trends, period life expectancy measures reported by the CDC should see a corresponding rebound. The COVID-19-related effects published thus far by the CDC are, as noted in this issue brief, *period* life expectancies, which assume that current conditions continue indefinitely and have thus decreased during the pandemic. If pre-COVID-19 mortality rates return, the CDC's measure of life expectancy should increase in future years. Cohort life expectancy, which is more heavily influenced by long-term expectations, will likely see at most a small change in response to any temporary increase in mortality.

The considerations discussed in this issue brief highlight the need to carefully consider the meaning of life expectancy trends, COVID-19-related or otherwise. The American Academy of Actuaries Pension Committee has produced this issue brief to provide useful information to help the reader better understand the complexities involved in the measurement of life expectancy estimates.

The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.



# Monthly Team Status

## November 2021

To the members of the OCERS Board of Retirement,

The following is my regular monthly summary of OCERS' team activity, starting with an overview of key customer service statistics as well as activity highlights followed by updates for November.

### MEMBER SERVICES MONTHLY METRICS

| Retirement Applications Received |             |             |            | 2021 Customer Service Statistics |                                   |                      |                           |                         |                       |
|----------------------------------|-------------|-------------|------------|----------------------------------|-----------------------------------|----------------------|---------------------------|-------------------------|-----------------------|
| Month                            | 2019        | 2020        | 2021       | Unplanned Recalculations         | Member Satisfaction Approval Rate | Queue Calls Received | Direct to Extension Calls | Operator Calls Received | Total Calls (monthly) |
| January                          | 261         | 254         | 101        | 2                                | 100%                              | 2,606                | 4,867                     | 992                     | 8,465                 |
| February                         | 201         | 169         | 90         | 1                                | 100%                              | 2,618                | 4,839                     | 1,811                   | 9,268                 |
| March                            | 206         | 80          | 57         | 1                                | 95%                               | 2,947                | 5,630                     | 1,599                   | 10,176                |
| April                            | 38          | 33          | 41         | 0                                | 95%                               | 2,830                | 5,120                     | 1,146                   | 9,096                 |
| May                              | 44          | 47          | 55         | 4                                | 95%                               | 2,552                | 4,731                     | 973                     | 8,256                 |
| June                             | 52          | 63          | 52         | 1                                | 95%                               | 2,010                | 4,601                     | 747                     | 7,358                 |
| July                             | 56          | 288         | 71         | 4                                | 95%                               | 1,936                | 4,375                     | 834                     | 7,145                 |
| August                           | 65          | 229         | 61         | 2                                | 95%                               | 1,745                | 4,091                     | 360                     | 6,196                 |
| September                        | 41          | 114         | 73         | 0                                | 95%                               | 1,983                | 4,368                     | 691                     | 7,042                 |
| October                          | 69          | 57          | 70         | 0                                | 95%                               | 2,270                | 4,333                     | 669                     | 7,272                 |
| November                         | 54          | 52          | 96         | 0                                | 95%                               | 1,760                | 4,121                     | 571                     | 6,452                 |
| December                         | 75          | 66          | 0          |                                  |                                   |                      |                           |                         |                       |
| <b>Grand Total</b>               | <b>1162</b> | <b>1452</b> | <b>767</b> | <b>15</b>                        | <b>96%</b>                        | <b>25,257</b>        | <b>51,076</b>             | <b>10,393</b>           | <b>86,726</b>         |

### MEMBER SURVEY RESPONSE

"I would like to submit a compliment and recognize one of your customer service representatives for their efforts to assist me with understanding the 415 Pension CAP process. They were very professional, listened carefully to my questions, and followed up with answers in a very timely manner. This team member is a fantastic representative for OCERS. I was so impressed that I had to send this message indicating how pleased I was with their assistance. Thank You."

#### November 2021

"I have dealt with OCERS through the past 10 years and no one by far has been as helpful, courteous, thorough, and a joy to speak with then the customer service representative that assisted me! I've been blessed each time I've called to speak with them, and it makes it so much easier to understand."

#### October 2021

"Having had several issues with my Employer during retirement, I found the OCERS customer service representative was exceedingly patient and understanding and kept me calm through the entire process. I just can't say enough about how great this OCERS representative was. My spouse retired from the County of Orange around the same time I did, and he had a different OCERS representative who proved to be as talented and professional as the one I had."

#### September 2021



# Monthly Team Status

## November 2021

### ACTIVITIES

#### **WELLS FARGO OUTSOURCING CHECK PRINTING – RETIREE PAYROLL**

Ms. Tracy Bowman of OCERS Finance Department reports:

OCERS processes approximately 65 retiree checks per month. When OCERS offices closed in March 2020 due to the COVID-19 global pandemic and staff started working remotely, we contacted Wells Fargo Bank to discuss the possibility of outsourcing the printing of retiree checks to reduce the reliance of having OCERS' staff physically perform this task at OCERS headquarters. As we decided to move forward with this project, it required a collaborative effort with team members from Finance, Member Services and IT, as well as Wells Fargo Bank and Vitech to develop a file that could be generated in V3 and used in Wells Fargo Bank's Payment Manager Platform. Effective with the November 2021 retiree payroll, the transition to outsourcing check printing to Wells Fargo was successfully completed! This has resulted in an enhanced business continuity/disaster recovery process, as well as a business process improvement that eliminated the need for staff to print and prepare the checks for mailing.

#### **OCERS CHAIR MEETS WITH ORANGE COUNTY EMPLOYEES ASSOCIATION (OCEA) EXECUTIVE TEAM**

OCERS Chair Dewane recently offered to meet with the OCEA Executive team to hear their thoughts on OCERS activities, and ensure open communications between our two agencies. Welcomed by OCEA General Manager Charles Barfield (CB,) I joined Mr. Dewane for lunch at OCEA headquarters on November 1. The meeting went well, with OCEA representatives commenting on the many years of trustful communications they have had with the OCERS team, both the Board and staff.

### UPDATES

#### **ALAMEDA RECALCULATION**

I have asked Mr. Jeff Lamberson to keep us all up-to-date via this monthly newsletter as to the progress in recalculating the hundreds of members impacted by the Supreme Court's ALAMEDA decision. His report for November follows:

Upon the Board making their decision to move forward and accept Staff Recommendations regarding the Alameda implementation, our Alameda project team has met almost every week to plan out changes that need to be made to our Pension Administration System to automate as much of the implementation as possible. Our vendor has been working on an import tool process that will allow us to adjust the pay items electronically from pensionable to non-pensionable for all impacted members. We are in the process of testing the solution and once this import tool is operational, we will apply it to the members affected by the Alameda decision. We will then be able to begin processing Contribution



# Monthly Team Status

## November 2021

Refunds for Active and Deferred members and expect that process to start approximately April 2022. We anticipate Payee Benefit Recalculations for retiree, survivors and DROs to commence approximately April 2022 and take to the end of September 2022 to complete.

We have mailed out letters to all retired members with these pay items in their measuring periods to notify them of the decision and provide estimated reductions in benefits based on initial calculations. We also sent a letter to Active and Deferred members just before Thanksgiving letting them know that the contribution reconciliation is ongoing. We will also be mailing another letter to retiree's (including Surviving and DRO accounts) before the end of December 2021.

### **VISION 2030 – An AI Driven Pension Administration System**

I will be including regular reports on our progress with Vision 2030. The AI ad hoc Committee, composed of seven OCERS staff members, met on November 17 with two special guests. Ms. Kelly Shen, Chief Information Officer for the Canada Pension Plan (their version of Social Security) Investment Arm, joined us by Zoom and let us know what steps they have been taking with regard to implementation of AI into their investment activities. Very informative, and Ms. Shen offered to join us virtually at any time in the future. We also welcomed a virtual visit by the new Deputy CEO for Los Angeles County Employees Retirement, Mr. Luis Lugo. LACERA has just launched their own AI initiative, and we have agreed to actively support one another in our mutual goal of bringing the power of AI to our pension plans. Mr. Lugo shared LACERA's early activities in this field, and has kindly agreed to join our committee meetings whenever possible so our two systems can be fully informed of our individual efforts, to avoid duplication of effort if possible.

### **OCERS INVESTMENT DIVISION**

Mr. Beeson reports:

As of October 31, 2021, the portfolio year-to-date is up 14.2% net of fees, while the one-year return is up 26.2%. The Fund value now stands at \$22.1 billion. The OCERS Investment Team continued to work effectively remotely during the coronavirus pandemic in November. OCERS' Investment Team closed on two new strategies and one re-up investment during the month of November. OCERS committed \$75 million to Pathlight Capital Fund II within the private credit portfolio. This fund will provide stretch asset-based loans to mostly retail and other asset heavy companies in North America. OCERS committed \$75 million to Constellation Generation IV in the unique strategies asset class. Constellation will provide growth capital to private alternative asset management firms. OCERS closed on a \$75 million re-up investment in Thoma Bravo Fund XV within the private equity buyout portfolio. This strategy invests in software and tech-enabled, large cap companies with a buy-and-build emphasis. OCERS also invested \$75 million in Thoma Bravo Fund XIII in 2018 and \$75 million in Thoma Bravo Fund XIV in 2020. OCERS' Investment Team completed reviewing consultant RFPs during the month and selected semifinalists for Zoom interviews for general consultant, private equity





# Monthly Team Status November 2021

---

consultant, real assets consultant, and real estate consultant. Finally, Molly Murphy and Shanta Chary completed first round interviews in November for the open Director of Investments position.



As a reminder, you will see this memo included with the BOARD COMMUNICATIONS document as part of the informational agenda for the January 18, 2022 meeting of the OCERS Board of Retirement.



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Steve Delaney, Chief Executive Officer  
**SUBJECT:** **2021 OCERS YEAR IN REVIEW: COMMUNICATION PLAN**

---

### Written Report

#### Background/Discussion

Since 2009 OCERS has crafted a strong outreach communication plan at the start of each year. In that year of 2009 the Great Recession was at its worst, and our goal was to assure our primary stakeholders that the OCERS Board of Retirement was actively involved in tackling the challenges facing the system.

For more than a decade we have started this annual process by meeting with each of the County Supervisors on an individual basis, followed by meetings with each participating employer, major labor group, as well as the Retired Employees Association of Orange County (REAOC). In the ongoing debate over public pension benefits, ensuring a well-educated audience is one of the best methods for quelling rumors and replacing them with facts in order to better guide policy makers.

2021 as was 2020 have proven to be different sort of years. Due to pandemic restrictions it took us a few months longer to arrange for the meetings. All stakeholder groups were eventually reached, through a combination of a few in-person meetings (special thanks to Chair Dewane and Vice Chair Eley who were willing to join me as we met with some of the individual County of Orange Supervisors), and the majority via Zoom.

Because of the restrictions we did not have a general presentation at the Hall of Administration for active members, nor did I make my annual presentation at a REAOC luncheon.

I propose the same process in 2022:

1. Individual meetings of the OCERS Chair, Vice-Chair and CEO with each of the County Supervisors and their support staff.
2. Individual meetings of a team of OCERS Executive Staff (Ms. Jenike, Ms. Shott and me) with the executive staff of each OCERS plan sponsor, as well as with the executive staff of each of our primary labor groups.

These will be held as in the past year either in-person or via Zoom, depending upon official health guidelines then in place.

I will wait until later in the year, and only if official health guidelines change would we proceed with -

3. A presentation for our active members.
4. A presentation at a quarterly REAOC luncheon.
5. Visits to the various members of the Orange County legislative delegation in both Sacramento and Washington DC.

The different stakeholder groups may not necessarily share interest in the same issues or concerns, so I have attached an outline of those topics or accomplishments I believe were of greatest importance in 2021, and have indicated which groups I plan on providing with a more detailed discussion of any given topic.

If there are any other topics you the Trustees feel it is important to share in these meetings, please let me know and I can work with the Chair of the Board to determine how and when to include additional information.

This is a fairly large undertaking, but one I believe well worth the effort. Scheduling conflicts will undoubtedly arise, but I anticipate the bulk of the outreach to be accomplished by late summer.

Attached – Matrix of 2021 Discussion Topics.

**Submitted by:**



**SD - Approved**

---

Steve Delaney  
Chief Executive Officer



## 2021 OCERS Year in Review

| TOPIC                         | ITEM #    | MEMBERS  | RETIRES  | SUPERVISORS | STAKEHOLDERS | LEGISLATORS |
|-------------------------------|-----------|----------|----------|-------------|--------------|-------------|
| 2021 FUND EARNINGS            | <b>1</b>  | <b>X</b> | <b>X</b> | <b>X</b>    | <b>X</b>     | <b>X</b>    |
| 2021 RVK REPORT               | <b>2</b>  |          |          | <b>X</b>    | <b>X</b>     | <b>X</b>    |
| INVESTMENT DEPARTMENT REPORT  | <b>3</b>  | <b>X</b> | <b>X</b> | <b>X</b>    | <b>X</b>     |             |
| 20 YEAR RATE PROJECTION       | <b>4</b>  | <b>X</b> | <b>X</b> | <b>X</b>    | <b>X</b>     |             |
| UAAL and FULL FUNDING BY 2033 | <b>5</b>  |          |          | <b>X</b>    | <b>X</b>     | <b>X</b>    |
| 100% ACCURACY                 | <b>6</b>  | <b>X</b> | <b>X</b> | <b>X</b>    | <b>X</b>     |             |
| ALAMEDA UPDATE                | <b>7</b>  | <b>X</b> | <b>X</b> | <b>X</b>    | <b>X</b>     | <b>X</b>    |
| FINAL AVERAGE SALARY UPDATE   | <b>8</b>  | <b>X</b> | <b>X</b> | <b>X</b>    | <b>X</b>     | <b>X</b>    |
| VISION 2030                   | <b>9</b>  | <b>X</b> | <b>X</b> | <b>X</b>    | <b>X</b>     | <b>X</b>    |
| OCERS BOARD MEMBERSHIP        | <b>10</b> | <b>X</b> | <b>X</b> | <b>X</b>    | <b>X</b>     | <b>X</b>    |

**“We provide secure retirement and disability benefits with the highest standards of excellence.”**



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** **DISABILITY RETIREMENT STATISTICS 2021 REPORT**

---

### Written Report

At the start of each year we compile statistical information capturing the various categories of disability retirement applications that were processed the prior calendar year. The information associated to the 2021 calendar year is presented here for the Board's review.

At the close of 2021, we had accepted 66 new applications and adjudicated 111 cases through the Disability Committee and the Board of Retirement.

Also included are the statistical reports applicable to the calendar years 2017, 2018, 2019 and 2020 for comparison purposes.

### Submitted by:



SJ-Approved

---

Suzanne Jenike  
Assistant CEO, External Operations

DISABILITY RETIREMENT STATISTICS 2021 REPORT

| <b>Total Filed 2021:</b> |           |             |
|--------------------------|-----------|-------------|
| <b>By Type:</b>          | <b>#</b>  | <b>%</b>    |
| SCD                      | 22        | 33%         |
| NSCD                     | 1         | 2%          |
| BOTH                     | 43        | 65%         |
|                          | <b>66</b> | <b>100%</b> |
| <b>By Employer:</b>      |           | <b>%</b>    |
| Community Resources      | 1         | 2%          |
| JWA                      | 1         | 2%          |
| Fire Authority           | 19        | 29%         |
| Health Care Agency       | 1         | 2%          |
| Probation                | 4         | 6%          |
| Assessor                 | 1         | 2%          |
| Public Works             | 1         | 2%          |
| Sanitation               | 1         | 2%          |
| Sheriff                  | 19        | 29%         |
| Social Service Agency    | 7         | 11%         |
| Superior Court           | 1         | 2%          |
| Transportation Authority | 10        | 15%         |
| Waste and Recycling      | 0         | 0%          |
|                          | <b>66</b> | <b>100%</b> |
| <b>By Member Type:</b>   |           | <b>%</b>    |
| General                  | 28        | 42%         |
| Safety                   | 38        | 58%         |
|                          | <b>66</b> | <b>100%</b> |

| <b>Total Granted 2021:</b>    |           |             |
|-------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>       | <b>#</b>  | <b>%</b>    |
| SCD (Initial Board Decision)  | 80        | 88%         |
| NSCD (Initial Board Decision) | 10        | 11%         |
| SCD (Hearings)                | 1         | 1%          |
| NSCD (Hearings)               | 0         | 0%          |
| SCD (Writ)                    | 0         | 0%          |
|                               | <b>91</b> | <b>100%</b> |
| <b>By Employer:</b>           |           | <b>%</b>    |
| Child Support Services        | 1         | 1%          |
| Community Resources           | 2         | 2%          |
| District Attorney             | 1         | 1%          |
| Fire Authority                | 26        | 29%         |
| Health Care Agency            | 2         | 2%          |
| Probation                     | 5         | 5%          |
| Public Defender               | 1         | 1%          |
| Sanitation                    | 1         | 1%          |
| Sheriff                       | 34        | 37%         |
| Social Services Agency        | 8         | 9%          |
| Superior Court                | 1         | 1%          |
| Transportation Authority      | 9         | 10%         |
|                               | <b>91</b> | <b>100%</b> |
| <b>By Member Type:</b>        |           | <b>%</b>    |
| General                       | 37        | 41%         |
| Safety                        | 54        | 59%         |
|                               | <b>91</b> | <b>100%</b> |

| <b>Total Denied 2021:</b>         |           |             |
|-----------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>           | <b>#</b>  | <b>%</b>    |
| SCD/NSCD (Initial Board Decision) | 10        | 50%         |
| SCD (Initial Board Decision)      | 7         | 35%         |
| NSCD (Initial Board Decision)     | 0         | 0%          |
| SCD/NSCD (Hearings)               | 3         | 15%         |
| NSCD (Hearings)                   | 0         | 0%          |
|                                   | <b>20</b> | <b>100%</b> |
| <b>By Employer:</b>               |           | <b>%</b>    |
| Health Care Agency                | 1         | 5%          |
| Community Resources               | 1         | 5%          |
| Fire Authority                    | 2         | 10%         |
| Treasurer/ Tax Collector          | 1         | 5%          |
| Probation                         | 0         | 0%          |
| Sanitation                        | 3         | 15%         |
| Sheriff                           | 5         | 25%         |
| Social Services Agency            | 6         | 30%         |
| Transportation Authority          | 1         | 5%          |
|                                   | <b>20</b> | <b>100%</b> |
| <b>By Member Type:</b>            |           | <b>%</b>    |
| General                           | 15        | 75%         |
| Safety                            | 5         | 25%         |
|                                   | <b>20</b> | <b>100%</b> |

| <u>Disabilities In Process Overview</u>   |    |
|---|----|
| Total filings pending Board presentation: | 93 |
| Pending Filed within the past 12 months:  | 63 |
| Pending Filed over 12 months:             | 25 |

**2020 Disability Statistics**

| <b>Total Filed 2020:</b> |           |             |
|--------------------------|-----------|-------------|
| <b>By Type:</b>          | <b>#</b>  | <b>%</b>    |
| SCD                      | 37        | 44%         |
| NSCD                     | 0         | 0%          |
| BOTH                     | 47        | 56%         |
|                          | <b>84</b> | <b>100%</b> |
| <b>By Employer:</b>      |           | <b>%</b>    |
| OC Parks                 | 1         | 1%          |
| District Attorney        | 3         | 4%          |
| Health Care Agency       | 2         | 2%          |
| Fire Authority           | 17        | 20%         |
| Transportation Authority | 7         | 8%          |
| Child Support Services   | 1         | 1%          |
| Sanitation               | 1         | 1%          |
| Sheriff                  | 37        | 44%         |
| Public Defender          | 1         |             |
| Social Services Agency   | 5         | 6%          |
| Probation                | 5         | 6%          |
| Superior Court           | 1         | 1%          |
| Child Support Services   | 1         | 1%          |
| County Counsel           | 1         | 1%          |
| Public Works             | 2         | 2%          |
|                          | <b>84</b> | <b>100%</b> |
| <b>By Member Type:</b>   |           | <b>%</b>    |
| General                  | 35        | 42%         |
| Safety                   | 49        | 58%         |
|                          | <b>84</b> | <b>100%</b> |

| <u>Disabilities In Process Overview</u>    |     |
|--|-----|
| Total filings pending Board presentation : | 130 |
| Pending Filed within the past 12 months:   | 84  |
| Pending Filed over 12 months:              | 46  |

| <b>Total Granted 2020:</b>    |           |             |
|-------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>       | <b>#</b>  | <b>%</b>    |
| SCD (Initial Board Decision)  | 52        | 93%         |
| NSCD (Initial Board Decision) | 3         | 5%          |
| SCD (Hearings)                | 1         | 2%          |
| NSCD (Hearings)               | 0         | 0%          |
| SCD (Writ)                    | 0         | 0%          |
|                               | <b>56</b> | <b>100%</b> |
| <b>By Employer:</b>           |           | <b>%</b>    |
| District Attorney             | 1         | 2%          |
| Sanitation                    | 0         | 0%          |
| Fire Authority                | 24        | 43%         |
| Health Care Agency            | 1         | 2%          |
| Sheriff                       | 10        | 18%         |
| Public Works                  | 2         | 4%          |
| OC Information Technology     | 0         | 0%          |
| Superior Court                | 1         | 2%          |
| Probation                     | 4         | 7%          |
| Waste and Recycling           | 0         | 0%          |
| Community Resources           | 0         | 0%          |
| Social Services Agency        | 4         | 7%          |
| Transportation Authority      | 9         | 16%         |
|                               | <b>56</b> | <b>100%</b> |
| <b>By Member Type:</b>        |           | <b>%</b>    |
| General                       | 21        | 38%         |
| Safety                        | 35        | 63%         |
|                               | <b>56</b> | <b>100%</b> |

| <b>Total Denied 2020:</b>         |           |             |
|-----------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>           | <b>#</b>  | <b>%</b>    |
| SCD/NSCD (Initial Board Decision) | 14        | 70%         |
| SCD (Initial Board Decision)      | 1         | 5%          |
| NSCD (Initial Board Decision)     | 0         | 0%          |
| SCD /NSCD(2nd Board Decision)     | 5         | 25%         |
| NSCD (2nd Board Decision)         | 0         | 0%          |
|                                   | <b>20</b> | <b>100%</b> |
| <b>By Employer:</b>               |           | <b>%</b>    |
| Fire Authority                    | 4         | 20%         |
| Treasurer Tax Collector           | 1         | 5%          |
| Probation                         | 1         | 5%          |
| OCCR                              | 0         | 0%          |
| Sheriff                           | 4         | 20%         |
| Social Services Agency            | 7         | 35%         |
| Community Resources               | 1         | 5%          |
| Superior Court                    | 0         | 0%          |
| Transportation Authority          | 1         | 5%          |
| Registrar of Voters               | 1         | 5%          |
|                                   | <b>20</b> | <b>100%</b> |
| <b>By Member Type:</b>            |           | <b>%</b>    |
| General                           | 14        | 70%         |
| Safety                            | 6         | 30%         |
|                                   | <b>20</b> | <b>100%</b> |

Disability Statistics 2020  
January 19, 2021

**2019 DISABILITY STATISTICS**

| <b>Total Filed 2019:</b> |           |             |
|--------------------------|-----------|-------------|
| <b>By Type:</b>          | <b>#</b>  | <b>%</b>    |
| SCD                      | 17        | 19%         |
| NSCD                     | 2         | 2%          |
| BOTH                     | 71        | 79%         |
|                          | <b>90</b> | <b>100%</b> |
| <b>By Employer:</b>      |           | <b>%</b>    |
| Assessor                 | 1         | 1%          |
| Auditor Controller       | 1         | 1%          |
| Child Support Services   | 1         | 1%          |
| District Attorney        | 1         | 1%          |
| Fire Authority           | 23        | 26%         |
| Health Care Agency       | 1         | 1%          |
| Probation                | 8         | 9%          |
| Public Works             | 2         | 2%          |
| Sheriff                  | 21        | 23%         |
| Social Services Agency   | 16        | 18%         |
| Superior Court           | 1         | 1%          |
| Transportation Authority | 14        | 16%         |
|                          | <b>90</b> | <b>100%</b> |
| <b>By Member Type:</b>   |           | <b>%</b>    |
| General                  | 49        | 54%         |
| Safety                   | 41        | 46%         |
|                          | <b>90</b> | <b>100%</b> |

| <b>Total Granted 2019:</b>    |           |             |
|-------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>       | <b>#</b>  | <b>%</b>    |
| SCD (Initial Board Decision)  | 58        | 83%         |
| NSCD (Initial Board Decision) | 11        | 16%         |
| SCD (Hearings)                | 1         | 1%          |
| NSCD (Hearings)               | 0         | 0%          |
| SCD (Writ)                    | 0         | 0%          |
|                               | <b>70</b> | <b>100%</b> |
| <b>By Employer:</b>           |           | <b>%</b>    |
| Community Resources           | 2         | 3%          |
| Fire Authority                | 17        | 24%         |
| Health Care Agency            | 1         | 1%          |
| Information Technology        | 1         | 1%          |
| Probation                     | 5         | 7%          |
| Public Defender               | 2         | 3%          |
| Public Works                  | 1         | 1%          |
| Sanitation                    | 1         | 1%          |
| Sheriff                       | 14        | 20%         |
| Social Services Agency        | 8         | 11%         |
| Superior Court                | 2         | 3%          |
| Transportation Authority      | 15        | 21%         |
| Waste and Recycling           | 1         | 1%          |
|                               | <b>70</b> | <b>100%</b> |
| <b>By Member Type:</b>        |           | <b>%</b>    |
| General                       | 40        | 57%         |
| Safety                        | 30        | 43%         |
|                               | <b>70</b> | <b>100%</b> |

| <b>Total Denied 2019:</b>         |           |             |
|-----------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>           | <b>#</b>  | <b>%</b>    |
| SCD/NSCD (Initial Board Decision) | 9         | 28%         |
| SCD (Initial Board Decision)      | 16        | 50%         |
| NSCD (Initial Board Decision)     | 0         | 0%          |
| SCD/NSCD(2nd Board Decision)      | 7         | 22%         |
| NSCD (2nd Board Decision)         | 0         | 0%          |
|                                   | <b>32</b> | <b>100%</b> |
| <b>By Employer:</b>               |           | <b>%</b>    |
| Auditor/Controller                | 1         | 3%          |
| Community Resources               | 1         | 3%          |
| Health Care Agency                | 3         | 9%          |
| Information Technology            | 1         | 3%          |
| Probation                         | 2         | 6%          |
| Sanitation                        | 2         | 6%          |
| Sheriff                           | 8         | 25%         |
| Social Services Agency            | 8         | 25%         |
| Superior Court                    | 2         | 6%          |
| Transportation Authority          | 4         | 14%         |
|                                   | <b>32</b> | <b>100%</b> |
| <b>By Member Type:</b>            |           | <b>%</b>    |
| General                           | 26        | 81%         |
| Safety                            | 6         | 19%         |
|                                   | <b>32</b> | <b>100%</b> |

Disabilities in Process Overview  
 Pending Board presentation: 95  
 Pending filed within the past 12 months: 81  
 Pending filed over 12 months: 14



**2018 DISABILITY STATISTICS**

| <b>Total Filed 2018:</b> |           |             |
|--------------------------|-----------|-------------|
| <b>By Type:</b>          | <b>#</b>  | <b>%</b>    |
| SCD                      | 29        | 35%         |
| NSCD                     | 2         | 2%          |
| BOTH                     | 51        | 62%         |
|                          | <b>82</b> | <b>100%</b> |
| <b>By Employer:</b>      |           | <b>%</b>    |
| Community Resources      | 2         | 2%          |
| District Attorney        | 2         | 2%          |
| Fire Authority           | 19        | 23%         |
| Health Care Agency       | 3         | 4%          |
| Probation                | 4         | 5%          |
| Public Defender          | 1         | 1%          |
| Public Works             | 1         | 1%          |
| Sanitation               | 1         | 1%          |
| Sheriff                  | 16        | 20%         |
| Social Services Agency   | 17        | 21%         |
| Superior Court           | 1         | 1%          |
| Transportation Authority | 13        | 16%         |
| Waste & Recycling        | 2         | 2%          |
|                          | <b>82</b> | <b>100%</b> |
| <b>By Member Type:</b>   |           | <b>%</b>    |
| General                  | 49        | 60%         |
| Safety                   | 33        | 40%         |
|                          | <b>82</b> | <b>100%</b> |

| <b>Total Granted 2018:</b>    |           |             |
|-------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>       | <b>#</b>  | <b>%</b>    |
| SCD (Initial Board Decision)  | 73        | 90%         |
| NSCD (Initial Board Decision) | 7         | 9%          |
| SCD (Hearings)                | 1         | 1%          |
| NSCD (Hearings)               | 0         | 0%          |
| SCD (Writ)                    | 0         | 0%          |
|                               | <b>81</b> | <b>100%</b> |
| <b>By Employer:</b>           |           | <b>%</b>    |
| Auditor Controller            | 1         | 1%          |
| District Attorney             | 2         | 2%          |
| Fire Authority                | 22        | 27%         |
| Health Care Agency            | 3         | 4%          |
| Probation                     | 4         | 5%          |
| Public Works                  | 2         | 2%          |
| Sanitation                    | 2         | 2%          |
| Sheriff                       | 29        | 36%         |
| Social Services Agency        | 7         | 9%          |
| Transportation Authority      | 9         | 11%         |
|                               | <b>81</b> | <b>100%</b> |
| <b>By Member Type:</b>        |           | <b>%</b>    |
| General                       | 32        | 40%         |
| Safety                        | 49        | 60%         |
|                               | <b>81</b> | <b>100%</b> |

| <b>Total Denied 2018:</b>         |           |             |
|-----------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>           | <b>#</b>  | <b>%</b>    |
| SCD/NSCD (Initial Board Decision) | 10        | 50%         |
| SCD (Initial Board Decision)      | 5         | 25%         |
| NSCD (Initial Board Decision)     | 2         | 10%         |
| SCD/NSCD(2nd Board Decision)      | 3         | 15%         |
| NSCD (2nd Board Decision)         | 0         | 0%          |
|                                   | <b>20</b> | <b>100%</b> |
| <b>By Employer:</b>               |           | <b>%</b>    |
| Community Resources               | 2         | 10%         |
| Fire Authority                    | 2         | 10%         |
| Health Care Agency                | 3         | 10%         |
| Probation                         | 1         | 5%          |
| Sanitation                        | 1         | 5%          |
| Sheriff                           | 4         | 5%          |
| Social Services Agency            | 5         | 20%         |
| Transportation Authority          | 2         | 25%         |
|                                   | <b>20</b> | <b>100%</b> |
| <b>By Member Type:</b>            |           | <b>%</b>    |
| General                           | 15        | 75%         |
| Safety                            | 5         | 25%         |
|                                   | <b>20</b> | <b>100%</b> |

|                                  |     |
|----------------------------------|-----|
| Disabilities In Process Overview |     |
| Pending Board presentation:      | 117 |
| Pending Filed in past 12 mos:    | 82  |
| Pending Filed over 12 mos:       | 35  |

**2017 Disability Statistics**

| <b>Total Filed 2017:</b> |           |             |
|--------------------------|-----------|-------------|
| <b>By Type:</b>          | <b>#</b>  | <b>%</b>    |
| SCD                      | 25        | 35%         |
| NSCD                     | 1         | 1%          |
| BOTH                     | 45        | 63%         |
|                          | <b>71</b> | <b>100%</b> |
| <b>By Employer:</b>      |           | <b>%</b>    |
| Auditor Controller       | 0         | 0%          |
| District Attorney        | 0         | 0%          |
| Health Care Agency       | 3         | 4%          |
| Fire Authority           | 17        | 24%         |
| Transportation Authority | 8         | 11%         |
| Public Defender          | 2         | 3%          |
| Sanitation               | 2         | 3%          |
| Sheriff                  | 25        | 35%         |
| Social Services Agency   | 5         | 7%          |
| Probation                | 5         | 7%          |
| Superior Court           | 1         | 1%          |
| Community Resources      | 2         | 3%          |
| Public Guardian          | 1         | 1%          |
|                          | <b>71</b> | <b>100%</b> |
| <b>By Member Type:</b>   |           | <b>%</b>    |
| General                  | 34        | 48%         |
| Safety                   | 37        | 52%         |
|                          | <b>71</b> | <b>100%</b> |

| <b>Total Granted 2017:</b>    |           |             |
|-------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>       | <b>#</b>  | <b>%</b>    |
| SCD (Initial Board Decision)  | 62        | 83%         |
| NSCD (Initial Board Decision) | 9         | 12%         |
| SCD (Hearings)                | 3         | 4%          |
| NSCD (Hearings)               | 1         | 1%          |
| SCD (Writ)                    |           | 0%          |
|                               | <b>75</b> | <b>100%</b> |
| <b>By Employer:</b>           |           | <b>%</b>    |
| Public Defender               | 3         | 4%          |
| Sanitation                    | 3         | 4%          |
| Fire Authority                | 11        | 15%         |
| Health Care Agency            | 4         | 5%          |
| Sheriff                       | 21        | 28%         |
| Public Works                  | 4         | 5%          |
| Superior Court                | 2         | 3%          |
| Probation                     | 2         | 3%          |
| Waste and Recycling           | 2         | 3%          |
| Community Resources           | 5         | 7%          |
| Social Services Agency        | 9         | 12%         |
| Transportation Authority      | 9         | 12%         |
|                               | <b>75</b> | <b>100%</b> |
| <b>By Member Type:</b>        |           | <b>%</b>    |
| General                       | 48        | 64%         |
| Safety                        | 27        | 36%         |
|                               | <b>75</b> | <b>100%</b> |

| <b>Total Denied 2017:</b>         |           |             |
|-----------------------------------|-----------|-------------|
| <b>By Type / Stage:</b>           | <b>#</b>  | <b>%</b>    |
| SCD/NSCD (Initial Board Decision) | 13        | 62%         |
| SCD (Initial Board Decision)      | 3         | 14%         |
| NSCD (Initial Board Decision)     | 1         | 5%          |
| SCD (2nd Board Decision)          | 3         | 14%         |
| NSCD (2nd Board Decision)         | 1         | 5%          |
|                                   | <b>21</b> | <b>100%</b> |
| <b>By Employer:</b>               |           | <b>%</b>    |
| Auditor Controller                | 1         | 5%          |
| Health Care Agency                | 0         | 0%          |
| Sheriff                           | 9         | 43%         |
| Social Services Agency            | 5         | 24%         |
| Fire Authority                    | 2         | 10%         |
| Transportation Authority          | 1         | 5%          |
| Community Resources               | 2         | 10%         |
| Sanitation                        | 1         | 5%          |
| Probation                         | 0         | 0%          |
|                                   | <b>21</b> | <b>100%</b> |
| <b>By Member Type:</b>            |           | <b>%</b>    |
| General                           | 16        | 76%         |
| Safety                            | 5         | 24%         |
|                                   | <b>21</b> | <b>100%</b> |

| <u>Disabilities In Process Overview</u>    |     |
|--|-----|
| Total filings pending Board presentation : | 113 |
| Pending Filed within the past 12 months:   | 68  |
| Pending Filed over 12 months:              | 45  |

**Summary of Disability Applications and Results, 2017-2021**

|  | <b>2017</b> | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>Total</b> |
|--|-------------|-------------|-------------|-------------|-------------|--------------|
| <b>Disability Applications Filed (Total)</b> | <b>71</b>   | <b>82</b>   | <b>90</b>   | <b>84</b>   | <b>66</b>   | <b>393</b>   |
| Service Connected Disability                 | 25          | 29          | 17          | 37          | 22          | 130          |
| Non Service Connected Disability             | 1           | 2           | 2           | 0           | 1           | 6            |
| Both   | 45          | 51          | 71          | 47          | 43          | 257          |
| <b>New Applications by Safety Members</b>    | <b>49</b>   | <b>33</b>   | <b>35</b>   | <b>49</b>   | <b>38</b>   | <b>204</b>   |
| by General Members                           | 22          | 49          | 55          | 35          | 28          | 189          |
| Disabilities Granted                         | 75          | 81          | 70          | 56          | 91          | 373          |
| Disabilities Denied                          | 21          | 20          | 32          | 20          | 20          | 113          |
| <b>New Applications, by Employer*</b>        | <b>71</b>   | <b>82</b>   | <b>90</b>   | <b>84</b>   | <b>66</b>   | <b>393</b>   |
| Assessor                                     |             |             | 1           |             | 1           | 2            |
| Auditor Controller                           |             |             | 1           |             |             | 1            |
| Child Support Services                       |             |             | 1           | 1           |             | 2            |
| District Attorney                            |             | 2           | 1           | 3           |             | 6            |
| Health Care Agency                           | 3           | 3           | 1           | 2           | 1           | 10           |
| Human Resource Services                      |             |             |             |             |             | 0            |
| John Wayne Airport                           |             | 0           |             |             | 1           | 1            |
| OC Community Resources                       | 2           | 2           |             |             | 1           | 5            |
| OC Fire Authority                            | 17          | 19          | 23          | 17          | 19          | 95           |
| OC Public Guardian/Administrator             | 1           |             |             |             |             | 1            |
| OC Public Works                              |             | 1           | 2           | 2           | 1           | 6            |
| OC Transportation Authority                  | 8           | 13          | 14          | 7           | 10          | 52           |
| OC Waste and Recycling                       |             | 2           |             |             |             | 2            |
| Probation                                    | 5           | 4           | 8           | 5           | 4           | 26           |
| Public Defender                              | 2           | 1           |             | 1           |             | 4            |
| Sanitation                                   | 2           | 1           |             | 1           | 1           | 5            |
| Sheriff's Dept                               | 25          | 16          | 21          | 37          | 19          | 118          |
| Social Services Agency                       | 5           | 17          | 16          | 5           | 7           | 50           |
| Superior Court                               | 1           | 1           | 1           | 1           | 1           | 5            |

*\*If employer is not listed, no applications received from 2017-2021*



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of Board of Retirement  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT:** ANNUAL FORM 700 DESIGNATED FILERS LIST AND FACT SHEET

---

### Written Report

#### Background/Discussion

The purpose of this memorandum is to advise OCERS Board Members of the requirement that they file a Form 700 – Statement of Economic Interests for the 2021 calendar year on or before April 1, 2022. More information regarding the filing requirements is set forth below.

On or before April 1 of every year, each designated filer under OCERS' Conflict of Interest Code is required to file a Form 700 Statement of Economic Interests to disclose personal economic interests in real property, businesses, and investments as described in the regulations adopted by the California Fair Political Practices Commission (FPPC).

OCERS' designated filers are:

- All members of the Board of Retirement (including Alternate Member)
- Chief Executive Officer
- Assistant Chief Executive Officer, External Operations
- Assistant Chief Executive Officer, Finance and Internal Operations
- Chief Investment Officer
- General Counsel
- Managing Director of Investments
- Director of Investments
- Investment Officers/Senior Investment Officers
- Investment Analysts/Senior Investment Analysts
- Deputy General Counsel
- Director of Internal Audit
- Director of Finance
- Director of Administrative Services
- Director of Information Technology
- Director of Information Security
- Contracts, Risk & Performance Manager

#### Completing and Filing the Form 700

The Form 700, FPPC Reference Pamphlet, Frequently Asked Questions and the new Expanded Statement of Economic Interests Fact Sheet for 2021/2022 are attached to assist you in completing your Form 700.

OCERS filers are strongly encouraged to file their Forms 700 using the County of Orange Clerk of the Board EDisclosure system. **All filers will receive an email from the Clerk of the Board's office in the next few weeks providing a link to the EDisclosure system.** The EDisclosure system is very easy to use and allows for direct



## Memorandum

---

filing and permanent electronic storage. The Clerk of the Board's office can assist filers with user names and passwords. In addition, I am available to answer questions regarding filing.

If you prefer to submit a hard copy of your Form 700, please send it to Steve Delaney's assistant, Cammy Torres, by March 25, 2022, so that we can forward it in a timely manner to the Clerk of the Board on your behalf.

Please note that the OCERS Annual Disclosure Policy was rescinded in 2018; accordingly, the filing of the separate Annual Disclosure Form is no longer required.

### Attachments:

- (1) Form 700
- (2) FPPC Reference Pamphlet
- (3) Frequently Asked Questions
- (4) Expanded SEI Fact Sheet (NEW)

### **Submitted by:**



---

Gina M. Ratto  
General Counsel

# 2021-2022 Statement of Economic Interests



---

## Form 700

A Public Document

### **Table of Contents**

Quick Start Guide ..... p.2  
 Who? Where? How? When? ..... p.3  
 Types of Statements ..... p.4  
 Cover Page and Schedules  
     Cover Page ..... p.5  
     Schedule A-1 (*Investments*) ..... p.7  
     Schedule A-2 (*Business Entities/Trusts*) ..... p.9  
     Schedule B (*Real Property*) ..... p.11  
     Schedule C (*Income*) ..... p.13  
     Schedule D (*Gifts*) ..... p.15  
     Schedule E (*Travel Payments*) ..... p.17  
 Restrictions and Prohibitions ..... p.19  
 Q & A ..... p.20

### **Helpful Resources**

- Video Tutorials
- Reference Pamphlet
- Excel Version
- FAQs
- Gift and Travel Fact Sheet for State and Local Officials

## **California Fair Political Practices Commission**

1102 Q Street, Suite 3000 • Sacramento, CA 95811

Email Advice: [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)

Toll-free advice line: 1 (866) ASK-FPPC • 1 (866) 275-3772

Telephone: (916) 322-5660 • Website: [www.fppc.ca.gov](http://www.fppc.ca.gov)

December 2021

## Quick Start Guide

Detailed instructions begin on page 3.

### WHEN IS THE ANNUAL STATEMENT DUE?

- March 1 – Elected State Officers, Judges and Court Commissioners, State Board and Commission members listed in Government Code Section 87200
- April 1 – Most other filers

### WHERE DO I FILE?

Most people file the Form 700 with their agency. If you're not sure where to file your Form 700, contact your filing officer or the person who asked you to complete it.

### ITEMS TO NOTE!

- The Form 700 is a public document.
- Only filers serving in active military duty may receive an extension on the filing deadline.
- You must also report interests held by your spouse or registered domestic partner.
- Your agency's conflict of interest code will help you to complete the Form 700. You are encouraged to get your conflict of interest code from the person who asked you to complete the Form 700.

### NOTHING TO REPORT?

Mark the "No reportable interests" box on Part 4 of the Cover Page, and submit only the signed Cover Page. Please review each schedule carefully!

| Schedule                         | Common Reportable Interests   | Common Non-Reportable Interests  |
|----------------------------------|---|--|
| A-1:<br>Investments              | Stocks, including those held in an IRA or 401K. Each stock must be listed.  | Insurance policies, government bonds, diversified mutual funds, funds similar to diversified mutual funds. |
| A-2:<br>Business Entities/Trusts | Business entities, sole proprietorships, partnerships, LLCs, corporations and trusts. (e.g., Form 1099 filers).     | Savings and checking accounts, and annuities.  |
| B:<br>Real Property              | Rental property in filer's jurisdiction, or within two miles of the boundaries of the jurisdiction.                 | A residence used exclusively as a personal residence (such as a home or vacation property).                |
| C:<br>Income                     | Non-governmental salaries. Note that filers are required to report only half of their spouse's or partner's salary. | Governmental salary (from school district, for example).   |
| D:<br>Gifts                      | Gifts from businesses, vendors, or other contractors (meals, tickets, etc.).  | Gifts from family members.   |
| E:<br>Travel Payments            | Travel payments from third parties (not your employer).   | Travel paid by your government agency.   |

**Note:** Like reportable interests, non-reportable interests may also create conflicts of interest and could be grounds for disqualification from certain decisions.

### QUESTIONS?

- [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)
- (866) 275-3772 Mon-Thurs, 9-11:30 a.m.

### E-FILING ISSUES?

- If using your agency's system, please contact technical support at your agency.
- If using FPPC's e-filing system, write to [form700@fppc.ca.gov](mailto:form700@fppc.ca.gov).

## What's New

### Gift Limit Increase

The gift limit increased to **\$520** for calendar years **2021** and **2022**. The gift limit in 2020 was **\$500**.

### Who must file:

- Elected and appointed officials and candidates listed in Government Code Section 87200
- Employees, appointed officials, and consultants filing pursuant to a conflict of interest code ("code filers"). **Obtain your disclosure categories, which describe the interests you must report, from your agency;** they are not part of the Form 700
- Candidates running for local elective offices that are designated in a conflict of interest code (e.g., county sheriffs, city clerks, school board trustees, and water board members)

#### Exception:

- Candidates for a county central committee are not required to file the Form 700
- Employees in newly created positions of existing agencies

For more information, see Reference Pamphlet, page 3, at [www.fppc.ca.gov](http://www.fppc.ca.gov).

### Where to file:

#### 87200 Filers

|                      |   |                             |
|----------------------|---|-----------------------------|
| State offices        | ⇒ | Your agency                 |
| Judicial offices     | ⇒ | The clerk of your court     |
| Retired Judges       | ⇒ | Directly with FPPC          |
| County offices       | ⇒ | Your county filing official |
| City offices         | ⇒ | Your city clerk             |
| Multi-County offices | ⇒ | Your agency                 |

#### Code Filers — State and Local Officials, Employees, and Consultants Designated in a Conflict of Interest

**Code:** File with your agency, board, or commission unless otherwise specified in your agency's code (e.g., Legislative staff files directly with FPPC). In most cases, the agency, board, or commission will retain the statements.

**Members of Newly Created Boards and Commissions:** File with your agency or with your agency's code reviewing body pursuant to Regulation 18754.

#### Employees in Newly Created Positions of Existing Agencies:

File with your agency or with your agency's code reviewing body. (See Reference Pamphlet, page 3.)

Candidates file as follow:

|  |   |  |
|--|---|--|
| State offices, Judicial offices and multi-county offices | ⇒ | County elections official with whom you file your declaration of candidacy |
| County offices   | ⇒ | County elections official  |
| City offices   | ⇒ | City Clerk   |
| Public Employee's Retirement System (CalPERS)            | ⇒ | CalPERS  |
| State Teacher's Retirement Board (CalSTRS)               | ⇒ | CalSTRS  |

### How to file:

The Form 700 is available at [www.fppc.ca.gov](http://www.fppc.ca.gov). Form 700 schedules are also available in Excel format. Each Statement must have a handwritten "wet" signature or "secure electronic signature," meaning either (1) a signature submitted using an approved electronic filing system or (2) if permitted by the filing officer, a digital signature submitted via the filer's agency email address. (See Regulations 18104 and 18757.) Companies such as Adobe and DocuSign offer digital signature services. All statements are signed under the penalty of perjury and must be verified by the filer. See Regulation 18723.1(c) for filing instructions for copies of expanded statements.

### When to file:

#### Annual Statements

##### ⇒ March 1, 2022

- Elected State Officers
- Judges and Court Commissioners
- State Board and State Commission Members listed in Government Code Section 87200

##### ⇒ April 1, 2022

- Most other filers

Individuals filing under conflict of interest codes in city and county jurisdictions should verify the annual filing date with their filing official or filing officer.

Statements postmarked by the filing deadline are considered filed on time.

Statements of 30 pages or less may be emailed or faxed by the deadline as long as the originally signed paper version is sent by first class mail to the filing official within 24 hours.

#### Assuming Office and Leaving Office Statements

Most filers file within 30 days of assuming or leaving office or within 30 days of the effective date of a newly adopted or amended conflict of interest code.

#### Exception:

If you assumed office between October 1, 2021, and December 31, 2021, and filed an assuming office statement, you are not required to file an annual statement until March 1, 2023, or April 1, 2023, whichever is applicable. The annual statement will cover the day after you assumed office through December 31, 2022. (See Reference Pamphlet, page 6, for additional exceptions.)

#### Candidate Statements

File no later than the final filing date for the declaration of candidacy or nomination documents. A candidate statement is not required if you filed an assuming office or annual statement for the same jurisdiction within 60 days before filing a declaration of candidacy or other nomination documents.

#### Late Statements

**There is no provision for filing deadline extensions unless the filer is serving in active military duty. (See page 19 for information on penalties and fines.)**

#### Amendments

Statements may be amended at any time. You are only required to amend the schedule that needs to be revised. It is not necessary to amend the entire filed form. Obtain amendment schedules at [www.fppc.ca.gov](http://www.fppc.ca.gov).



## Types of Statements

### Assuming Office Statement:

If you are a newly appointed official or are newly employed in a position designated, or that will be designated, in a state or local agency's conflict of interest code, your assuming office date is the date you were sworn in or otherwise authorized to serve in the position. If you are a newly elected official, your assuming office date is the date you were sworn in.

- Report: Investments, interests in real property, and business positions held on the date you assumed the office or position must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the date you assumed the office or position.

For positions subject to confirmation by the State Senate or the Commission on Judicial Appointments, your assuming office date is the date you were appointed or nominated to the position.

- Example: Maria Lopez was nominated by the Governor to serve on a state agency board that is subject to state Senate confirmation. The assuming office date is the date Maria's nomination is submitted to the Senate. Maria must report investments, interests in real property, and business positions she holds on that date, and income (including loans, gifts, and travel payments) received during the 12 months prior to that date.

If your office or position has been added to a newly adopted or newly amended conflict of interest code, use the effective date of the code or amendment, whichever is applicable.

- Report: Investments, interests in real property, and business positions held on the effective date of the code or amendment must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the effective date of the code or amendment.

### Annual Statement:

Generally, the period covered is January 1, 2021, through December 31, 2021. If the period covered by the statement is different than January 1, 2021, through December 31, 2021, (for example, you assumed office between October 1, 2020, and December 31, 2020 or you are combining statements), you must specify the period covered.

- Investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during the period covered by the statement must be reported. Do not change the preprinted dates on Schedules A-1, A-2, and B unless you are required to report the acquisition or disposition of an interest that did not occur in 2021.

- If your disclosure category changes during a reporting period, disclose under the old category until the effective date of the conflict of interest code amendment and disclose under the new disclosure category through the end of the reporting period.

### Leaving Office Statement:

Generally, the period covered is January 1, 2021, through the date you stopped performing the duties of your position. If the period covered differs from January 1, 2021, through the date you stopped performing the duties of your position (for example, you assumed office between October 1, 2020, and December 31, 2020, or you are combining statements), the period covered must be specified. The reporting period can cover parts of two calendar years.

- Report: Investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during the period covered by the statement. Do not change the preprinted dates on Schedules A-1, A-2, and B unless you are required to report the acquisition or disposition of an interest that did not occur in 2021.

### Candidate Statement:

If you are filing a statement in connection with your candidacy for state or local office, investments, interests in real property, and business positions held on the date of filing your declaration of candidacy must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the date of filing your declaration of candidacy is reportable. Do not change the preprinted dates on Schedules A-1, A-2, and B.

Candidates running for local elective offices (e.g., county sheriffs, city clerks, school board trustees, or water district board members) must file candidate statements, as required by the conflict of interest code for the elected position. The code may be obtained from the agency of the elected position.

### Amendments:

If you discover errors or omissions on any statement, file an amendment as soon as possible. You are only required to amend the schedule that needs to be revised; it is not necessary to refile the entire form. Obtain amendment schedules from the FPPC website at [www.fppc.ca.gov](http://www.fppc.ca.gov).

**Note:** Once you file your statement, you may not withdraw it. All changes must be noted on amendment schedules.

### Expanded Statement:

If you hold multiple positions subject to reporting requirements, you may be able to file an expanded statement for each position, rather than a separate and distinct statement for each position. The expanded statement must cover all reportable interests for all jurisdictions and list all positions for which it is filed. The rules and processes governing the filing of an expanded statement are set forth in Regulation 18723.1



**STATEMENT OF ECONOMIC INTERESTS  
COVER PAGE  
A PUBLIC DOCUMENT**

Date Initial Filing Received  
Filing Official Use Only

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)

**1. Office, Agency, or Court**

Agency Name (Do not use acronyms)

Division, Board, Department, District, if applicable Your Position

► If filing for multiple positions, list below or on an attachment. (Do not use acronyms)

Agency: Position:

**2. Jurisdiction of Office (Check at least one box)**

State Judge, Retired Judge, Pro Tem Judge, or Court Commissioner (Statewide Jurisdiction)  
Multi-County County of  
City of Other

**3. Type of Statement (Check at least one box)**

**Annual:** The period covered is January 1, 2021, through December 31, 2021. **Leaving Office:** Date Left \_\_\_\_/\_\_\_\_/\_\_\_\_ (Check one circle.)  
-or- The period covered is \_\_\_\_/\_\_\_\_/\_\_\_\_, through December 31, 2021. The period covered is January 1, 2021, through the date of leaving office.  
**Assuming Office:** Date assumed \_\_\_\_/\_\_\_\_/\_\_\_\_ -or- The period covered is \_\_\_\_/\_\_\_\_/\_\_\_\_, through the date of leaving office.  
**Candidate:** Date of Election \_\_\_\_ and office sought, if different than Part 1: \_\_\_\_\_

**4. Schedule Summary (must complete) ► Total number of pages including this cover page: \_\_\_\_\_**

**Schedules attached**

- Schedule A-1 - Investments – schedule attached
- Schedule A-2 - Investments – schedule attached
- Schedule B - Real Property – schedule attached
- Schedule C - Income, Loans, & Business Positions – schedule attached
- Schedule D - Income – Gifts – schedule attached
- Schedule E - Income – Gifts – Travel Payments – schedule attached

-or- **None - No reportable interests on any schedule**

**5. Verification**

MAILING ADDRESS STREET CITY STATE ZIP CODE  
(Business or Agency Address Recommended - Public Document)

DAYTIME TELEPHONE NUMBER EMAIL ADDRESS  
( )

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed (month, day, year)

Signature (File the originally signed paper statement with your filing official.)

## Instructions Cover Page

Enter your name, mailing address, and daytime telephone number in the spaces provided. **Because the Form 700 is a public document, you may list your business/office address instead of your home address.**

### Part 1. Office, Agency, or Court

- Enter the name of the office sought or held, or the agency or court. Consultants must enter the public agency name rather than their private firm's name. (Examples: State Assembly; Board of Supervisors; Office of the Mayor; Department of Finance; Hope County Superior Court).
- Indicate the name of your division, board, or district, if applicable. (Examples: Division of Waste Management; Board of Accountancy; District 45). **Do not use acronyms.**
- Enter your position title. (Examples: Director; Chief Counsel; City Council Member; Staff Services Analyst).
- If you hold multiple positions (i.e., a city council member who also is a member of a county board or commission) you may be required to file separate and distinct statements with each agency. To simplify your filing obligations, in some cases you may instead complete a single expanded statement and file it with each agency.
  - The rules and processes governing the filing of an expanded statement are set forth in Regulation 18723.1. To file an expanded statement for multiple positions, enter the name of each agency with which you are required to file and your position title with each agency in the space provided. **Do not use acronyms.** Attach an additional sheet if necessary. Complete one statement disclosing all reportable interests for all jurisdictions. Then file the expanded statement with each agency as directed by Regulation 18723.1(c).

If you assume or leave a position after a filing deadline, you must complete a separate statement. For example, a city council member who assumes a position with a county special district after the April annual filing deadline must file a separate assuming office statement. In subsequent years, the city council member may expand their annual filing to include both positions.

#### Example:

Brian Bourne is a city council member for the City of Lincoln and a board member for the Camp Far West Irrigation District – a multi-county agency that covers the Counties of Placer and Yuba. The City is located within Placer County. Brian may complete one expanded statement to disclose all reportable interests for both offices and list both positions on the Cover Page. Brian will file the expanded statement with each the City and the District as directed by Regulation 18723.1(c).

### Part 2. Jurisdiction of Office

- Check the box indicating the jurisdiction of your agency and, if applicable, identify the jurisdiction. Judges, judicial candidates, and court commissioners have statewide jurisdiction. All other filers should review the Reference Pamphlet, page 13, to determine their jurisdiction.
- If your agency is a multi-county office, list each county in which your agency has jurisdiction.

- If your agency is not a state office, court, county office, city office, or multi-county office (e.g., school districts, special districts and JPAs), check the "other" box and enter the county or city in which the agency has jurisdiction.

#### Example:

This filer is a member of a water district board with jurisdiction in portions of Yuba and Sutter Counties.

|   |   |
|---|---|
| <b>1. Office, Agency, or Court</b>  |   |
| Agency Name (Do not use acronyms)<br>Feather River Irrigation District                    |   |
| Division, Board, Department, District, if applicable<br>N/A                               | Your Position<br>Board Member   |
| ▶ If filing for multiple positions, list below or on an attachment. (Do not use acronyms) |   |
| Agency: N/A   | Position:   |
| <b>2. Jurisdiction of Office (Check at least one box)</b>                                 |   |
| <input type="checkbox"/> State  | <input type="checkbox"/> Judge or Court Commissioner (Statewide Jurisdiction) |
| <input checked="" type="checkbox"/> Multi-County <u>Yuba &amp; Sutter Counties</u>        | <input type="checkbox"/> County of _____                                      |
| <input type="checkbox"/> City of _____  | <input type="checkbox"/> Other _____  |

### Part 3. Type of Statement

Check at least one box. The period covered by a statement is determined by the type of statement you are filing. If you are completing a 2021 annual statement, **do not** change the pre-printed dates to reflect 2022. Your annual statement is used for reporting the **previous year's** economic interests. Economic interests for your annual filing covering January 1, 2022, through December 31, 2022, will be disclosed on your statement filed in 2023. See Reference Pamphlet, page 4.

Combining Statements: Certain types of statements for the same position may be combined. For example, if you leave office after January 1, but before the deadline for filing your annual statement, you may combine your annual and leaving office statements. File by the earliest deadline. Consult your filing officer or the FPPC.

### Part 4. Schedule Summary

- Complete the Schedule Summary after you have reviewed each schedule to determine if you have reportable interests.
- Enter the total number of completed pages including the cover page and either check the box for each schedule you use to disclose interests; **or** if you have nothing to disclose on any schedule, check the "No reportable interests" box. Please **do not** attach any blank schedules.

### Part 5. Verification

Complete the verification by signing the statement and entering the date signed. Each statement must have an original "wet" signature unless filed with a secure electronic signature. (See page 3 above.) All statements must be signed under penalty of perjury and be verified by the filer pursuant to Government Code Section 81004. See Regulation 18723.1(c) for filing instructions for copies of expanded statements.

**When you sign your statement, you are stating, under penalty of perjury, that it is true and correct.** Only the filer has authority to sign the statement. An unsigned statement is not considered filed and you may be subject to late filing penalties.

## SCHEDULE A-1 Investments

### Stocks, Bonds, and Other Interests (Ownership Interest is Less Than 10%)

*Investments must be itemized.*

*Do not attach brokerage or financial statements.*

**CALIFORNIA FORM 700**  
FAIR POLITICAL PRACTICES COMMISSION

Name \_\_\_\_\_

▶ NAME OF BUSINESS ENTITY \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS \_\_\_\_\_

---

FAIR MARKET VALUE

|                         |                      |
|-------------------------|----------------------|
| \$2,000 - \$10,000      | \$10,001 - \$100,000 |
| \$100,001 - \$1,000,000 | Over \$1,000,000     |

NATURE OF INVESTMENT

Stock      Other \_\_\_\_\_ (Describe)

Partnership      Income Received of \$0 - \$499  
Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE:

\_\_\_\_/\_\_\_\_/21      \_\_\_\_/\_\_\_\_/21  
ACQUIRED                  DISPOSED

▶ NAME OF BUSINESS ENTITY \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS \_\_\_\_\_

---

FAIR MARKET VALUE

|                         |                      |
|-------------------------|----------------------|
| \$2,000 - \$10,000      | \$10,001 - \$100,000 |
| \$100,001 - \$1,000,000 | Over \$1,000,000     |

NATURE OF INVESTMENT

Stock      Other \_\_\_\_\_ (Describe)

Partnership      Income Received of \$0 - \$499  
Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE:

\_\_\_\_/\_\_\_\_/21      \_\_\_\_/\_\_\_\_/21  
ACQUIRED                  DISPOSED

▶ NAME OF BUSINESS ENTITY \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS \_\_\_\_\_

---

FAIR MARKET VALUE

|                         |                      |
|-------------------------|----------------------|
| \$2,000 - \$10,000      | \$10,001 - \$100,000 |
| \$100,001 - \$1,000,000 | Over \$1,000,000     |

NATURE OF INVESTMENT

Stock      Other \_\_\_\_\_ (Describe)

Partnership      Income Received of \$0 - \$499  
Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE:

\_\_\_\_/\_\_\_\_/21      \_\_\_\_/\_\_\_\_/21  
ACQUIRED                  DISPOSED

▶ NAME OF BUSINESS ENTITY \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS \_\_\_\_\_

---

FAIR MARKET VALUE

|                         |                      |
|-------------------------|----------------------|
| \$2,000 - \$10,000      | \$10,001 - \$100,000 |
| \$100,001 - \$1,000,000 | Over \$1,000,000     |

NATURE OF INVESTMENT

Stock      Other \_\_\_\_\_ (Describe)

Partnership      Income Received of \$0 - \$499  
Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE:

\_\_\_\_/\_\_\_\_/21      \_\_\_\_/\_\_\_\_/21  
ACQUIRED                  DISPOSED

▶ NAME OF BUSINESS ENTITY \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS \_\_\_\_\_

---

FAIR MARKET VALUE

|                         |                      |
|-------------------------|----------------------|
| \$2,000 - \$10,000      | \$10,001 - \$100,000 |
| \$100,001 - \$1,000,000 | Over \$1,000,000     |

NATURE OF INVESTMENT

Stock      Other \_\_\_\_\_ (Describe)

Partnership      Income Received of \$0 - \$499  
Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE:

\_\_\_\_/\_\_\_\_/21      \_\_\_\_/\_\_\_\_/21  
ACQUIRED                  DISPOSED

▶ NAME OF BUSINESS ENTITY \_\_\_\_\_

GENERAL DESCRIPTION OF THIS BUSINESS \_\_\_\_\_

---

FAIR MARKET VALUE

|                         |                      |
|-------------------------|----------------------|
| \$2,000 - \$10,000      | \$10,001 - \$100,000 |
| \$100,001 - \$1,000,000 | Over \$1,000,000     |

NATURE OF INVESTMENT

Stock      Other \_\_\_\_\_ (Describe)

Partnership      Income Received of \$0 - \$499  
Income Received of \$500 or More (Report on Schedule C)

IF APPLICABLE, LIST DATE:

\_\_\_\_/\_\_\_\_/21      \_\_\_\_/\_\_\_\_/21  
ACQUIRED                  DISPOSED

Comments: \_\_\_\_\_

## Instructions – Schedules A-1 and A-2 Investments

“Investment” means a financial interest in any business entity (including a consulting business or other independent contracting business) that is located in, doing business in, planning to do business in, or that has done business during the previous two years in your agency’s jurisdiction in which you, your spouse or registered domestic partner, or your dependent children had a direct, indirect, or beneficial interest totaling \$2,000 or more at any time during the reporting period. (See Reference Pamphlet, page 13.)

### Reportable investments include:

- Stocks, bonds, warrants, and options, including those held in margin or brokerage accounts and managed investment funds (See Reference Pamphlet, page 13.)
- Sole proprietorships
- Your own business or your spouse’s or registered domestic partner’s business (See Reference Pamphlet, page 8, for the definition of “business entity.”)
- Your spouse’s or registered domestic partner’s investments even if they are legally separate property
- Partnerships (e.g., a law firm or family farm)
- Investments in reportable business entities held in a retirement account (See Reference Pamphlet, page 15.)
- If you, your spouse or registered domestic partner, and dependent children together had a 10% or greater ownership interest in a business entity or trust (including a living trust), you must disclose investments held by the business entity or trust. (See Reference Pamphlet, page 16, for more information on disclosing trusts.)
- Business trusts

### You are not required to disclose:

- Government bonds, diversified mutual funds, certain funds similar to diversified mutual funds (such as exchange traded funds) and investments held in certain retirement accounts. (See Reference Pamphlet, page 13.) (Regulation 18237)
- Bank accounts, savings accounts, money market accounts and certificates of deposits
- Insurance policies
- Annuities
- Commodities
- Shares in a credit union
- Government bonds (including municipal bonds)

### Reminders

- Do you know your agency’s jurisdiction?
- Did you hold investments at any time during the period covered by this statement?
- Code filers – your disclosure categories may only require disclosure of specific investments.

- Retirement accounts invested in non-reportable interests (e.g., insurance policies, mutual funds, or government bonds) (See Reference Pamphlet, page 15.)
- Government defined-benefit pension plans (such as CalPERS and CalSTRS plans)
- Certain interests held in a blind trust (See Reference Pamphlet, page 16.)

**Use Schedule A-1** to report ownership of less than 10% (e.g., stock). Schedule C (Income) may also be required if the investment is not a stock or corporate bond. (See second example below.)

**Use Schedule A-2** to report ownership of 10% or greater (e.g., a sole proprietorship).

### To Complete Schedule A-1:

Do not attach brokerage or financial statements.

- Disclose the name of the business entity.
- Provide a general description of the business activity of the entity (e.g., pharmaceuticals, computers, automobile manufacturing, or communications).
- Check the box indicating the highest fair market value of your investment during the reporting period. If you are filing a candidate or an assuming office statement, indicate the fair market value on the filing date or the date you took office, respectively. (See page 20 for more information.)
- Identify the nature of your investment (e.g., stocks, warrants, options, or bonds).
- An acquired or disposed of date is only required if you initially acquired or entirely disposed of the investment interest during the reporting period. The date of a stock dividend reinvestment or partial disposal is not required. Generally, these dates will not apply if you are filing a candidate or an assuming office statement.

### Examples:

Frank Byrd holds a state agency position. His conflict of interest code requires full disclosure of investments. Frank must disclose his stock holdings of \$2,000 or more in any company that is located in or does business in California, as well as those stocks held by his spouse or registered domestic partner and dependent children.

Alice Lance is a city council member. She has a 4% interest, worth \$5,000, in a limited partnership located in the city. Alice must disclose the partnership on Schedule A-1 and income of \$500 or more received from the partnership on Schedule C.

# SCHEDULE A-2 Investments, Income, and Assets of Business Entities/Trusts (Ownership Interest is 10% or Greater)

**CALIFORNIA FORM 700**  
FAIR POLITICAL PRACTICES COMMISSION

Name \_\_\_\_\_

**▶ 1. BUSINESS ENTITY OR TRUST**

Name \_\_\_\_\_

Address (Business Address Acceptable) \_\_\_\_\_

Check one  
Trust, go to 2      Business Entity, complete the box, then go to 2

**GENERAL DESCRIPTION OF THIS BUSINESS**

FAIR MARKET VALUE      IF APPLICABLE, LIST DATE:

|                         |                           |                           |
|-------------------------|---------------------------|---------------------------|
| \$0 - \$1,999           | _____ / _____ / <b>21</b> | _____ / _____ / <b>21</b> |
| \$2,000 - \$10,000      | _____ / _____ / <b>21</b> | _____ / _____ / <b>21</b> |
| \$10,001 - \$100,000    | ACQUIRED                  | DISPOSED                  |
| \$100,001 - \$1,000,000 |                           |                           |
| Over \$1,000,000        |                           |                           |

NATURE OF INVESTMENT  
Partnership      Sole Proprietorship      \_\_\_\_\_ Other \_\_\_\_\_

YOUR BUSINESS POSITION \_\_\_\_\_

**▶ 1. BUSINESS ENTITY OR TRUST**

Name \_\_\_\_\_

Address (Business Address Acceptable) \_\_\_\_\_

Check one  
Trust, go to 2      Business Entity, complete the box, then go to 2

**GENERAL DESCRIPTION OF THIS BUSINESS**

FAIR MARKET VALUE      IF APPLICABLE, LIST DATE:

|                         |                           |                           |
|-------------------------|---------------------------|---------------------------|
| \$0 - \$1,999           | _____ / _____ / <b>21</b> | _____ / _____ / <b>21</b> |
| \$2,000 - \$10,000      | _____ / _____ / <b>21</b> | _____ / _____ / <b>21</b> |
| \$10,001 - \$100,000    | ACQUIRED                  | DISPOSED                  |
| \$100,001 - \$1,000,000 |                           |                           |
| Over \$1,000,000        |                           |                           |

NATURE OF INVESTMENT  
Partnership      Sole Proprietorship      \_\_\_\_\_ Other \_\_\_\_\_

YOUR BUSINESS POSITION \_\_\_\_\_

**▶ 2. IDENTIFY THE GROSS INCOME RECEIVED (INCLUDE YOUR PRO RATA SHARE OF THE GROSS INCOME TO THE ENTITY/TRUST)**

|                    |                      |
|--------------------|----------------------|
| \$0 - \$499        | \$10,001 - \$100,000 |
| \$500 - \$1,000    | OVER \$100,000       |
| \$1,001 - \$10,000 |                      |

**▶ 2. IDENTIFY THE GROSS INCOME RECEIVED (INCLUDE YOUR PRO RATA SHARE OF THE GROSS INCOME TO THE ENTITY/TRUST)**

|                    |                      |
|--------------------|----------------------|
| \$0 - \$499        | \$10,001 - \$100,000 |
| \$500 - \$1,000    | OVER \$100,000       |
| \$1,001 - \$10,000 |                      |

**▶ 3. LIST THE NAME OF EACH REPORTABLE SINGLE SOURCE OF INCOME OF \$10,000 OR MORE** (Attach a separate sheet if necessary.)

None      or      Names listed below

**▶ 3. LIST THE NAME OF EACH REPORTABLE SINGLE SOURCE OF INCOME OF \$10,000 OR MORE** (Attach a separate sheet if necessary.)

None      or      Names listed below

**▶ 4. INVESTMENTS AND INTERESTS IN REAL PROPERTY HELD OR LEASED BY THE BUSINESS ENTITY OR TRUST**

Check one box:  
INVESTMENT      REAL PROPERTY

Name of Business Entity, if Investment, or Assessor's Parcel Number or Street Address of Real Property \_\_\_\_\_

Description of Business Activity or City or Other Precise Location of Real Property \_\_\_\_\_

FAIR MARKET VALUE      IF APPLICABLE, LIST DATE:

|                         |                           |                           |
|-------------------------|---------------------------|---------------------------|
| \$2,000 - \$10,000      | _____ / _____ / <b>21</b> | _____ / _____ / <b>21</b> |
| \$10,001 - \$100,000    | _____ / _____ / <b>21</b> | _____ / _____ / <b>21</b> |
| \$100,001 - \$1,000,000 | ACQUIRED                  | DISPOSED                  |
| Over \$1,000,000        |                           |                           |

NATURE OF INTEREST  
Property Ownership/Deed of Trust      Stock      Partnership

Leasehold \_\_\_\_\_      Other \_\_\_\_\_  
Yrs. remaining

Check box if additional schedules reporting investments or real property are attached

**▶ 4. INVESTMENTS AND INTERESTS IN REAL PROPERTY HELD OR LEASED BY THE BUSINESS ENTITY OR TRUST**

Check one box:  
INVESTMENT      REAL PROPERTY

Name of Business Entity, if Investment, or Assessor's Parcel Number or Street Address of Real Property \_\_\_\_\_

Description of Business Activity or City or Other Precise Location of Real Property \_\_\_\_\_

FAIR MARKET VALUE      IF APPLICABLE, LIST DATE:

|                         |                           |                           |
|-------------------------|---------------------------|---------------------------|
| \$2,000 - \$10,000      | _____ / _____ / <b>21</b> | _____ / _____ / <b>21</b> |
| \$10,001 - \$100,000    | _____ / _____ / <b>21</b> | _____ / _____ / <b>21</b> |
| \$100,001 - \$1,000,000 | ACQUIRED                  | DISPOSED                  |
| Over \$1,000,000        |                           |                           |

NATURE OF INTEREST  
Property Ownership/Deed of Trust      Stock      Partnership

Leasehold \_\_\_\_\_      Other \_\_\_\_\_  
Yrs. remaining

Check box if additional schedules reporting investments or real property are attached

Comments: \_\_\_\_\_

## Instructions – Schedule A-2 Investments, Income, and Assets of Business Entities/Trusts

---

Use Schedule A-2 to report investments in a business entity (including a consulting business or other independent contracting business) or trust (including a living trust) in which you, your spouse or registered domestic partner, and your dependent children, together or separately, had a 10% or greater interest, totaling \$2,000 or more, during the reporting period and which is located in, doing business in, planning to do business in, or which has done business during the previous two years in your agency's jurisdiction. (See Reference Pamphlet, page 13.) A trust located outside your agency's jurisdiction is reportable if it holds assets that are located in or doing business in the jurisdiction. Do not report a trust that contains non-reportable interests. For example, a trust containing only your personal residence not used in whole or in part as a business, your savings account, and some municipal bonds, is not reportable.

Also report on Schedule A-2 investments and real property held by that entity or trust if your pro rata share of the investment or real property interest was \$2,000 or more during the reporting period.

### To Complete Schedule A-2:

**Part 1.** Disclose the name and address of the business entity or trust. If you are reporting an interest in a business entity, check "Business Entity" and complete the box as follows:

- Provide a general description of the business activity of the entity.
- Check the box indicating the highest fair market value of your investment during the reporting period.
- If you initially acquired or entirely disposed of this interest during the reporting period, enter the date acquired or disposed.
- Identify the nature of your investment.
- Disclose the job title or business position you held with the entity, if any (i.e., if you were a director, officer, partner, trustee, employee, or held any position of management). A business position held by your spouse is not reportable.

**Part 2.** Check the box indicating **your pro rata** share of the **gross** income received **by** the business entity or trust. This amount includes your pro rata share of the **gross** income **from** the business entity or trust, as well as your community property interest in your spouse's or registered domestic partner's share. Gross income is the total amount of income before deducting expenses, losses, or taxes.

**Part 3.** Disclose the name of each source of income that is located in, doing business in, planning to do business in, or that has done business during the previous two years in your agency's jurisdiction, as follows:

- Disclose each source of income and outstanding loan **to the business entity or trust** identified in Part 1 if your pro rata share of the **gross** income (including your community property interest in your spouse's or registered domestic partner's share) to the business entity or trust from that source was \$10,000 or more during the reporting period. (See Reference Pamphlet, page 11, for examples.) Income from governmental sources may be reportable if not considered salary. See Regulation 18232. Loans from commercial lending institutions made in the lender's regular course of business on terms available to members of the public without regard to your official status are not reportable.
- Disclose each individual or entity that was a source of commission income of \$10,000 or more during the reporting period through the business entity identified in Part 1. (See Reference Pamphlet, page 8.)

You may be required to disclose sources of income located outside your jurisdiction. For example, you may have a client who resides outside your jurisdiction who does business on a regular basis with you. Such a client, if a reportable source of \$10,000 or more, must be disclosed.

Mark "None" if you do not have any reportable \$10,000 sources of income to disclose. Phrases such as "various clients" or "not disclosing sources pursuant to attorney-client privilege" are not adequate disclosure. (See Reference Pamphlet, page 14, for information on procedures to request an exemption from disclosing privileged information.)

**Part 4.** Report any investments or interests in real property held or leased **by the entity or trust** identified in Part 1 if your pro rata share of the interest held was \$2,000 or more during the reporting period. Attach additional schedules or use FPPC's Form 700 Excel spreadsheet if needed.

- Check the applicable box identifying the interest held as real property or an investment.
- If investment, provide the name and description of the business entity.
- If real property, report the precise location (e.g., an assessor's parcel number or address).
- Check the box indicating the highest fair market value of your interest in the real property or investment during the reporting period. (Report the fair market value of the portion of your residence claimed as a tax deduction if you are utilizing your residence for business purposes.)
- Identify the nature of your interest.
- Enter the date acquired or disposed only if you initially acquired or entirely disposed of your interest in the property or investment during the reporting period.



## SCHEDULE B Interests in Real Property (Including Rental Income)

▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS

\_\_\_\_\_

CITY \_\_\_\_\_

---

FAIR MARKET VALUE IF APPLICABLE, LIST DATE:

|                         |              |              |  |
|-------------------------|--------------|--------------|--|
| \$2,000 - \$10,000      |              |              |  |
| \$10,001 - \$100,000    | ____/____/21 | ____/____/21 |  |
| \$100,001 - \$1,000,000 | ACQUIRED     | DISPOSED     |  |
| Over \$1,000,000        |              |              |  |

NATURE OF INTEREST

Ownership/Deed of Trust \_\_\_\_\_ Easement \_\_\_\_\_

Leasehold \_\_\_\_\_

Yrs. remaining \_\_\_\_\_ Other \_\_\_\_\_

IF RENTAL PROPERTY, GROSS INCOME RECEIVED

|                      |                 |                    |
|----------------------|-----------------|--------------------|
| \$0 - \$499          | \$500 - \$1,000 | \$1,001 - \$10,000 |
| \$10,001 - \$100,000 | OVER \$100,000  |                    |

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.

None

▶ ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS

\_\_\_\_\_

CITY \_\_\_\_\_

---

FAIR MARKET VALUE IF APPLICABLE, LIST DATE:

|                         |              |              |  |
|-------------------------|--------------|--------------|--|
| \$2,000 - \$10,000      |              |              |  |
| \$10,001 - \$100,000    | ____/____/21 | ____/____/21 |  |
| \$100,001 - \$1,000,000 | ACQUIRED     | DISPOSED     |  |
| Over \$1,000,000        |              |              |  |

NATURE OF INTEREST

Ownership/Deed of Trust \_\_\_\_\_ Easement \_\_\_\_\_

Leasehold \_\_\_\_\_

Yrs. remaining \_\_\_\_\_ Other \_\_\_\_\_

IF RENTAL PROPERTY, GROSS INCOME RECEIVED

|                      |                 |                    |
|----------------------|-----------------|--------------------|
| \$0 - \$499          | \$500 - \$1,000 | \$1,001 - \$10,000 |
| \$10,001 - \$100,000 | OVER \$100,000  |                    |

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more.

None

\* You are not required to report loans from a commercial lending institution made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER\* \_\_\_\_\_

ADDRESS (Business Address Acceptable) \_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF LENDER \_\_\_\_\_

INTEREST RATE \_\_\_\_\_ TERM (Months/Years) \_\_\_\_\_

\_\_\_\_\_% None \_\_\_\_\_

HIGHEST BALANCE DURING REPORTING PERIOD

|                      |                    |
|----------------------|--------------------|
| \$500 - \$1,000      | \$1,001 - \$10,000 |
| \$10,001 - \$100,000 | OVER \$100,000     |

Guarantor, if applicable \_\_\_\_\_

NAME OF LENDER\* \_\_\_\_\_

ADDRESS (Business Address Acceptable) \_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF LENDER \_\_\_\_\_

INTEREST RATE \_\_\_\_\_ TERM (Months/Years) \_\_\_\_\_

\_\_\_\_\_% None \_\_\_\_\_

HIGHEST BALANCE DURING REPORTING PERIOD

|                      |                    |
|----------------------|--------------------|
| \$500 - \$1,000      | \$1,001 - \$10,000 |
| \$10,001 - \$100,000 | OVER \$100,000     |

Guarantor, if applicable \_\_\_\_\_

Comments: \_\_\_\_\_



## Instructions – Schedule B Interests in Real Property

Report interests in real property located in your agency's jurisdiction in which you, your spouse or registered domestic partner, or your dependent children had a direct, indirect, or beneficial interest totaling \$2,000 or more any time during the reporting period. Real property is also considered to be "within the jurisdiction" of a local government agency if the property or any part of it is located within two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency. (See Reference Pamphlet, page 13.)

**Interests in real property include:**

- An ownership interest (including a beneficial ownership interest)
- A deed of trust, easement, or option to acquire property
- A leasehold interest (See Reference Pamphlet, page 14.)
- A mining lease
- An interest in real property held in a retirement account (See Reference Pamphlet, page 15.)
- An interest in real property held by a business entity or trust in which you, your spouse or registered domestic partner, and your dependent children together had a 10% or greater ownership interest (Report on Schedule A-2.)
- Your spouse's or registered domestic partner's interests in real property that are legally held separately by him or her

**You are not required to report:**

- A residence, such as a home or vacation cabin, used exclusively as a personal residence (However, a residence in which you rent out a room or for which you claim a business deduction may be reportable. If reportable, report the fair market value of the portion claimed as a tax deduction.)
- Some interests in real property held through a blind trust (See Reference Pamphlet, page 16.)
  - **Please note:** A non-reportable property can still be grounds for a conflict of interest and may be disqualifying.

**To Complete Schedule B:**

- Report the precise location (e.g., an assessor's parcel number or address) of the real property.
- Check the box indicating the fair market value of your interest in the property (regardless of what you owe on the property).
- Enter the date acquired or disposed only if you initially acquired or entirely disposed of your interest in the property during the reporting period.
- Identify the nature of your interest. If it is a leasehold,

**Reminders**

- Income and loans already reported on Schedule B are not also required to be reported on Schedule C.
- Real property already reported on Schedule A-2, Part 4 is not also required to be reported on Schedule B.
- Code filers – do your disclosure categories require disclosure of real property?

disclose the number of years remaining on the lease.

- If you received rental income, check the box indicating the gross amount you received.
- If you had a 10% or greater interest in real property and received rental income, list the name of the source(s) if your pro rata share of the gross income from any single tenant was \$10,000 or more during the reporting period. If you received a total of \$10,000 or more from two or more tenants acting in concert (in most cases, this will apply to married couples), disclose the name of each tenant. Otherwise, mark "None."
- Loans from a private lender that total \$500 or more and are secured by real property may be reportable. **Loans from commercial lending institutions made in the lender's regular course of business on terms available to members of the public without regard to your official status are not reportable.**

When reporting a loan:

- Provide the name and address of the lender.
- Describe the lender's business activity.
- Disclose the interest rate and term of the loan. For variable interest rate loans, disclose the conditions of the loan (e.g., Prime + 2) or the average interest rate paid during the reporting period. The term of a loan is the total number of months or years given for repayment of the loan at the time the loan was established.
- Check the box indicating the highest balance of the loan during the reporting period.
- Identify a guarantor, if applicable.

If you have more than one reportable loan on a single piece of real property, report the additional loan(s) on Schedule C.

**Example:**

Allison Gande is a city planning commissioner. During the reporting period, she received rental income of \$12,000, from a single tenant who rented property she owned in the city's jurisdiction. If Allison received \$6,000 each from two tenants, the tenants' names would not be required because no single tenant paid her \$10,000 or more. A married couple is considered a single tenant.

|   |   |
|---|---|
| ASSESSOR'S PARCEL NUMBER OR STREET ADDRESS<br>4600 24th Street  |   |
| CITY<br>Sacramento  |   |
| FAIR MARKET VALUE   | IF APPLICABLE, LIST DATE:   |
| <input type="checkbox"/> \$2,000 - \$10,000   | <input checked="" type="checkbox"/> ACQUIRED <input checked="" type="checkbox"/> DISPOSED |
| <input type="checkbox"/> \$10,001 - \$100,000   |   |
| <input checked="" type="checkbox"/> \$100,001 - \$1,000,000   |   |
| <input type="checkbox"/> Over \$1,000,000   |   |
| NATURE OF INTEREST  |   |
| <input type="checkbox"/> Ownership/Deed of Trust  | <input type="checkbox"/> Easement   |
| <input type="checkbox"/> Leasehold  | <input type="checkbox"/> Other  |
| IF RENTAL PROPERTY, GROSS INCOME RECEIVED   |   |
| <input type="checkbox"/> \$0 - \$499  | <input type="checkbox"/> \$500 - \$1,000  |
| <input checked="" type="checkbox"/> \$10,001 - \$100,000  | <input type="checkbox"/> OVER \$100,000   |
| SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of \$10,000 or more. |   |
| <input type="checkbox"/> None   |   |
| Henry Wells   |   |
| NAME OF LENDER*   |   |
| Sophia Petroillo  |   |
| ADDRESS (Business Address Acceptable)   |   |
| 2121 Blue Sky Parkway, Sacramento   |   |
| BUSINESS ACTIVITY, IF ANY, OF LENDER  |   |
| Restaurant Owner  |   |
| INTEREST RATE   | TERM (Months/Years)   |
| 8 % <input type="checkbox"/> None   | 15 Years  |
| HIGHEST BALANCE DURING REPORTING PERIOD   |   |
| <input type="checkbox"/> \$500 - \$1,000  | <input type="checkbox"/> \$1,001 - \$10,000   |
| <input checked="" type="checkbox"/> \$10,001 - \$100,000  | <input type="checkbox"/> OVER \$100,000   |
| <input type="checkbox"/> Guarantor, if applicable   |   |
| Comments:   |   |

**SCHEDULE C**  
**Income, Loans, & Business**  
**Positions**  
 (Other than Gifts and Travel Payments)

**CALIFORNIA FORM 700**  
 FAIR POLITICAL PRACTICES COMMISSION  
 Name \_\_\_\_\_

| ▶ 1. INCOME RECEIVED   |   | ▶ 1. INCOME RECEIVED   |   |
|--|---|--|---|
| NAME OF SOURCE OF INCOME<br>_____  |   | NAME OF SOURCE OF INCOME<br>_____  |   |
| ADDRESS (Business Address Acceptable)<br>_____                                 |   | ADDRESS (Business Address Acceptable)<br>_____                                 |   |
| BUSINESS ACTIVITY, IF ANY, OF SOURCE<br>_____                                  |   | BUSINESS ACTIVITY, IF ANY, OF SOURCE<br>_____                                  |   |
| YOUR BUSINESS POSITION<br>_____  |   | YOUR BUSINESS POSITION<br>_____  |   |
| GROSS INCOME RECEIVED  | No Income - Business Position Only  | GROSS INCOME RECEIVED  | No Income - Business Position Only  |
| \$500 - \$1,000  | \$1,001 - \$10,000  | \$500 - \$1,000  | \$1,001 - \$10,000  |
| \$10,001 - \$100,000   | OVER \$100,000  | \$10,001 - \$100,000   | OVER \$100,000  |
| CONSIDERATION FOR WHICH INCOME WAS RECEIVED                                    |   | CONSIDERATION FOR WHICH INCOME WAS RECEIVED                                    |   |
| Salary   | Spouse's or registered domestic partner's income<br>(For self-employed use Schedule A-2.) | Salary   | Spouse's or registered domestic partner's income<br>(For self-employed use Schedule A-2.) |
| Partnership (Less than 10% ownership. For 10% or greater use<br>Schedule A-2.) |   | Partnership (Less than 10% ownership. For 10% or greater use<br>Schedule A-2.) |   |
| Sale of _____<br><i>(Real property, car, boat, etc.)</i>                       |   | Sale of _____<br><i>(Real property, car, boat, etc.)</i>                       |   |
| Loan repayment   |   | Loan repayment   |   |
| Commission or Rental Income, list each source of \$10,000 or more<br>_____     |   | Commission or Rental Income, list each source of \$10,000 or more<br>_____     |   |
| <i>(Describe)</i>  |   | <i>(Describe)</i>  |   |
| Other _____<br><i>(Describe)</i>   |   | Other _____<br><i>(Describe)</i>   |   |

**▶ 2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD**

\* You are not required to report loans from a commercial lending institution, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

|   |  |
|---|--|
| NAME OF LENDER*<br>_____<br>ADDRESS (Business Address Acceptable)<br>_____<br>BUSINESS ACTIVITY, IF ANY, OF LENDER<br>_____<br>HIGHEST BALANCE DURING REPORTING PERIOD<br>\$500 - \$1,000<br>\$1,001 - \$10,000<br>\$10,001 - \$100,000<br>OVER \$100,000 | INTEREST RATE<br>_____ %    None<br>TERM (Months/Years)<br>_____<br>SECURITY FOR LOAN<br>None          Personal residence<br>Real Property _____<br><i>Street address</i><br>_____<br><i>City</i><br>Guarantor _____<br>Other _____<br><i>(Describe)</i> |
|---|--|

**Comments:** \_\_\_\_\_

## Instructions – Schedule C Income, Loans, & Business Positions (Income Other Than Gifts and Travel Payments)

### Reporting Income:

Report the source and amount of gross income of \$500 or more you received during the reporting period. Gross income is the total amount of income before deducting expenses, losses, or taxes and includes loans other than loans from a commercial lending institution. (See Reference Pamphlet, page 11.) You must also report the source of income to your spouse or registered domestic partner if your community property share was \$500 or more during the reporting period.

The source and income must be reported only if the source is located in, doing business in, planning to do business in, or has done business during the previous two years in your agency's jurisdiction. (See Reference Pamphlet, page 13.) Reportable sources of income may be further limited by your disclosure category located in your agency's conflict of interest code.

### Reporting Business Positions:

You must report your job title with each reportable business entity even if you received no income during the reporting period. Use the comments section to indicate that no income was received.

### Commonly reportable income and loans include:

- Salary/wages, per diem, and reimbursement for expenses including travel payments provided by your employer
- Community property interest (50%) in your spouse's or registered domestic partner's income - **report the employer's name and all other required information**
- Income from investment interests, such as partnerships, reported on Schedule A-1
- Commission income not required to be reported on Schedule A-2 (See Reference Pamphlet, page 8.)
- Gross income from any sale, including the sale of a house or car (Report your pro rata share of the total sale price.)
- Rental income not required to be reported on Schedule B
- Prizes or awards not disclosed as gifts
- Payments received on loans you made to others
- An honorarium received prior to becoming a public official (See Reference Pamphlet, page 10.)
- Incentive compensation (See Reference Pamphlet, page 12.)

### Reminders

- Code filers – your disclosure categories may not require disclosure of all sources of income.
- If you or your spouse or registered domestic partner are self-employed, report the business entity on Schedule A-2.
- Do not disclose on Schedule C income, loans, or business positions already reported on Schedules A-2 or B.

### You are not required to report:

- Salary, reimbursement for expenses or per diem, or social security, disability, or other similar benefit payments received by you or your spouse or registered domestic partner from a federal, state, or local government agency.
- Stock dividends and income from the sale of stock unless the source can be identified.
- Income from a PERS retirement account.

(See Reference Pamphlet, page 12.)

### To Complete Schedule C:

#### Part 1. Income Received/Business Position Disclosure

- Disclose the name and address of each source of income or each business entity with which you held a business position.
- Provide a general description of the business activity if the source is a business entity.
- Check the box indicating the amount of gross income received.
- Identify the consideration for which the income was received.
- For income from commission sales, check the box indicating the gross income received and list the name of each source of commission income of \$10,000 or more. (See Reference Pamphlet, page 8.) **Note: If you receive commission income on a regular basis or have an ownership interest of 10% or more, you must disclose the business entity and the income on Schedule A-2.**
- Disclose the job title or business position, if any, that you held with the business entity, even if you did not receive income during the reporting period.

#### Part 2. Loans Received or Outstanding During the Reporting Period

- Provide the name and address of the lender.
- Provide a general description of the business activity if the lender is a business entity.
- Check the box indicating the highest balance of the loan during the reporting period.
- Disclose the interest rate and the term of the loan.
  - For variable interest rate loans, disclose the conditions of the loan (e.g., Prime + 2) or the average interest rate paid during the reporting period.
  - The term of the loan is the total number of months or years given for repayment of the loan at the time the loan was entered into.
- Identify the security, if any, for the loan.

**CALIFORNIA FORM 700**  
 FAIR POLITICAL PRACTICES COMMISSION

Name \_\_\_\_\_

## SCHEDULE D Income – Gifts

▶ NAME OF SOURCE *(Not an Acronym)*

\_\_\_\_\_

ADDRESS *(Business Address Acceptable)*

\_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF SOURCE

\_\_\_\_\_

| DATE (mm/dd/yy) | VALUE    | DESCRIPTION OF GIFT(S) |
|-----------------|----------|------------------------|
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |

▶ NAME OF SOURCE *(Not an Acronym)*

\_\_\_\_\_

ADDRESS *(Business Address Acceptable)*

\_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF SOURCE

\_\_\_\_\_

| DATE (mm/dd/yy) | VALUE    | DESCRIPTION OF GIFT(S) |
|-----------------|----------|------------------------|
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |

▶ NAME OF SOURCE *(Not an Acronym)*

\_\_\_\_\_

ADDRESS *(Business Address Acceptable)*

\_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF SOURCE

\_\_\_\_\_

| DATE (mm/dd/yy) | VALUE    | DESCRIPTION OF GIFT(S) |
|-----------------|----------|------------------------|
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |

▶ NAME OF SOURCE *(Not an Acronym)*

\_\_\_\_\_

ADDRESS *(Business Address Acceptable)*

\_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF SOURCE

\_\_\_\_\_

| DATE (mm/dd/yy) | VALUE    | DESCRIPTION OF GIFT(S) |
|-----------------|----------|------------------------|
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |

▶ NAME OF SOURCE *(Not an Acronym)*

\_\_\_\_\_

ADDRESS *(Business Address Acceptable)*

\_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF SOURCE

\_\_\_\_\_

| DATE (mm/dd/yy) | VALUE    | DESCRIPTION OF GIFT(S) |
|-----------------|----------|------------------------|
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |

▶ NAME OF SOURCE *(Not an Acronym)*

\_\_\_\_\_

ADDRESS *(Business Address Acceptable)*

\_\_\_\_\_

BUSINESS ACTIVITY, IF ANY, OF SOURCE

\_\_\_\_\_

| DATE (mm/dd/yy) | VALUE    | DESCRIPTION OF GIFT(S) |
|-----------------|----------|------------------------|
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |
| ___/___/___     | \$ _____ | _____                  |

Comments: \_\_\_\_\_

## Instructions – Schedule D Income – Gifts

A gift is anything of value for which you have not provided equal or greater consideration to the donor. A gift is reportable if its fair market value is \$50 or more. In addition, multiple gifts totaling \$50 or more received during the reporting period from a single source must be reported.

It is the acceptance of a gift, not the ultimate use to which it is put, that imposes your reporting obligation. Except as noted below, you must report a gift even if you never used it or if you gave it away to another person.

If the exact amount of a gift is unknown, you must make a good faith estimate of the item's fair market value. Listing the value of a gift as "over \$50" or "value unknown" is not adequate disclosure. In addition, if you received a gift through an intermediary, you must disclose the name, address, and business activity of both the donor and the intermediary. You may indicate an intermediary either in the "source" field after the name or in the "comments" section at the bottom of Schedule D.

### Commonly reportable gifts include:

- Tickets/passes to sporting or entertainment events
- Tickets/passes to amusement parks
- Parking passes not used for official agency business
- Food, beverages, and accommodations, including those provided in direct connection with your attendance at a convention, conference, meeting, social event, meal, or like gathering
- Rebates/discounts not made in the regular course of business to members of the public without regard to official status
- Wedding gifts (See Reference Pamphlet, page 16)
- An honorarium received prior to assuming office (You may report an honorarium as income on Schedule C, rather than as a gift on Schedule D, if you provided services of equal or greater value than the payment received. See Reference Pamphlet, page 10.)
- Transportation and lodging (See Schedule E.)
- Forgiveness of a loan received by you

### Reminders

- Gifts from a single source are subject to a \$520 limit in 2021. (See Reference Pamphlet, page 10.)
- Code filers – you only need to report gifts from reportable sources.

### Gift Tracking Mobile Application

- FPPC has created a gift tracking app for mobile devices that helps filers track gifts and provides a quick and easy way to upload the information to the Form 700. Visit FPPC's website to download the app.

### You are not required to disclose:

- Gifts that were not used and that, within 30 days after receipt, were returned to the donor or delivered to a charitable organization or government agency without being claimed by you as a charitable contribution for tax purposes
- Gifts from your spouse or registered domestic partner, child, parent, grandparent, grandchild, brother, sister, and certain other family members (See Regulation 18942 for a complete list.). The exception does not apply if the donor was acting as an agent or intermediary for a reportable source who was the true donor.
- Gifts of similar value exchanged between you and an individual, other than a lobbyist registered to lobby your state agency, on holidays, birthdays, or similar occasions
- Gifts of informational material provided to assist you in the performance of your official duties (e.g., books, pamphlets, reports, calendars, periodicals, or educational seminars)
- A monetary bequest or inheritance (However, inherited investments or real property may be reportable on other schedules.)
- Personalized plaques or trophies with an individual value of less than \$250
- Campaign contributions
- Up to two tickets, for your own use, to attend a fundraiser for a campaign committee or candidate, or to a fundraiser for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The ticket must be received from the organization or committee holding the fundraiser.
- Gifts given to members of your immediate family if the source has an established relationship with the family member and there is no evidence to suggest the donor had a purpose to influence you. (See Regulation 18943.)
- Free admission, food, and nominal items (such as a pen, pencil, mouse pad, note pad or similar item) available to all attendees, at the event at which the official makes a speech (as defined in Regulation 18950(b)(2)), so long as the admission is provided by the person who organizes the event.
- Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official's state agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made to suggest the donor had a purpose to influence you.

### To Complete Schedule D:

- Disclose the full name (not an acronym), address, and, if a business entity, the business activity of the source.
- Provide the date (month, day, and year) of receipt, and disclose the fair market value and description of the gift.

**CALIFORNIA FORM 700**  
 FAIR POLITICAL PRACTICES COMMISSION  
 Name \_\_\_\_\_

**SCHEDULE E**  
**Income – Gifts**  
**Travel Payments, Advances,**  
**and Reimbursements**

- Mark either the gift or income box.
- Mark the “501(c)(3)” box for a travel payment received from a nonprofit 501(c)(3) organization or the “Speech” box if you made a speech or participated in a panel. Per Government Code Section 89506, these payments may not be subject to the gift limit. However, they may result in a disqualifying conflict of interest.
- For gifts of travel, provide the travel destination.

|  |  |
|--|--|
| <p>▶ NAME OF SOURCE <i>(Not an Acronym)</i> _____</p> <p>ADDRESS <i>(Business Address Acceptable)</i> _____</p> <p>CITY AND STATE _____</p> <p>501 (c)(3) or DESCRIBE BUSINESS ACTIVITY, IF ANY, OF SOURCE _____</p> <p>DATE(S): ____/____/____ - ____/____/____ AMT: \$ _____<br/> <i>(If gift)</i></p> <p>▶ MUST CHECK ONE:      Gift <b>-or-</b>      Income</p> <p>    Made a Speech/Participated in a Panel _____</p> <p>    Other - Provide Description _____</p> <p>▶ If Gift, Provide Travel Destination _____</p> | <p>▶ NAME OF SOURCE <i>(Not an Acronym)</i> _____</p> <p>ADDRESS <i>(Business Address Acceptable)</i> _____</p> <p>CITY AND STATE _____</p> <p>501 (c)(3) or DESCRIBE BUSINESS ACTIVITY, IF ANY, OF SOURCE _____</p> <p>DATE(S): ____/____/____ - ____/____/____ AMT: \$ _____<br/> <i>(If gift)</i></p> <p>▶ MUST CHECK ONE:      Gift <b>-or-</b>      Income</p> <p>    Made a Speech/Participated in a Panel _____</p> <p>    Other - Provide Description _____</p> <p>▶ If Gift, Provide Travel Destination _____</p> |
| <p>▶ NAME OF SOURCE <i>(Not an Acronym)</i> _____</p> <p>ADDRESS <i>(Business Address Acceptable)</i> _____</p> <p>CITY AND STATE _____</p> <p>501 (c)(3) or DESCRIBE BUSINESS ACTIVITY, IF ANY, OF SOURCE _____</p> <p>DATE(S): ____/____/____ - ____/____/____ AMT: \$ _____<br/> <i>(If gift)</i></p> <p>▶ MUST CHECK ONE:      Gift <b>-or-</b>      Income</p> <p>    Made a Speech/Participated in a Panel _____</p> <p>    Other - Provide Description _____</p> <p>▶ If Gift, Provide Travel Destination _____</p> | <p>▶ NAME OF SOURCE <i>(Not an Acronym)</i> _____</p> <p>ADDRESS <i>(Business Address Acceptable)</i> _____</p> <p>CITY AND STATE _____</p> <p>501 (c)(3) or DESCRIBE BUSINESS ACTIVITY, IF ANY, OF SOURCE _____</p> <p>DATE(S): ____/____/____ - ____/____/____ AMT: \$ _____<br/> <i>(If gift)</i></p> <p>▶ MUST CHECK ONE:      Gift <b>-or-</b>      Income</p> <p>    Made a Speech/Participated in a Panel _____</p> <p>    Other - Provide Description _____</p> <p>▶ If Gift, Provide Travel Destination _____</p> |

Comments: \_\_\_\_\_

## Instructions – Schedule E Travel Payments, Advances, and Reimbursements

Travel payments reportable on Schedule E include advances and reimbursements for travel and related expenses, including lodging and meals.

Gifts of travel may be subject to the gift limit. In addition, certain travel payments are reportable gifts, but are not subject to the gift limit. To avoid possible misinterpretation or the perception that you have received a gift in excess of the gift limit, you may wish to provide a specific description of the purpose of your travel. (See the FPPC fact sheet entitled “Limitations and Restrictions on Gifts, Honoraria, Travel, and Loans” to read about travel payments under section 89506(a).)

**You are not required to disclose:**

- Travel payments received from any state, local, or federal government agency for which you provided services equal or greater in value than the payments received, such as reimbursement for travel on agency business from your government agency employer.
- A payment for travel from another local, state, or federal government agency and related per diem expenses when the travel is for education, training or other inter-agency programs or purposes.
- Travel payments received from your employer in the normal course of your employment that are included in the income reported on Schedule C.
- A travel payment that was received from a nonprofit entity exempt from taxation under Internal Revenue Code Section 501(c)(3) for which you provided equal or greater consideration, such as reimbursement for travel on business for a 501(c)(3) organization for which you are a board member.

**Note: Certain travel payments may not be reportable if reported via email on Form 801 by your agency.**

**To Complete Schedule E:**

- Disclose the full name (not an acronym) and address of the source of the travel payment.
- Identify the business activity if the source is a business entity.
- Check the box to identify the payment as a gift or income, report the amount, and disclose the date(s).
  - **Travel payments are gifts** if you did not provide services that were equal to or greater in value than the payments received. You must disclose gifts totaling \$50 or more from a single source during the period covered by the statement.

When reporting travel payments that are gifts, you must provide a description of the gift, the **date(s)** received, and the **travel destination**.

- **Travel payments are income** if you provided services that were equal to or greater in value than the

payments received. You must disclose income totaling \$500 or more from a single source during the period covered by the statement. You have the burden of proving the payments are income rather than gifts. When reporting travel payments as income, you must describe the services you provided in exchange for the payment. You are not required to disclose the date(s) for travel payments that are income.

**Example:**

City council member MaryClaire Chandler is the chair of a 501(c)(6) trade association, and the association pays for her travel to attend its meetings. Because MaryClaire is deemed to be providing equal or greater consideration for the travel payment by virtue of serving on the board, this payment may be reported as income. Payments for MaryClaire to attend other events for which she is not providing services are likely considered gifts. Note that the same payment from a 501(c)(3) would NOT be reportable.

|   |               |
|---|---------------|
| ▶ NAME OF SOURCE (Not an Acronym)   |               |
| Health Services Trade Association   |               |
| ADDRESS (Business Address Acceptable)   |               |
| 1230 K Street, Suite 610  |               |
| CITY AND STATE  |               |
| Sacramento, CA  |               |
| <input type="checkbox"/> 501 (c)(3) or DESCRIBE BUSINESS ACTIVITY, IF ANY, OF SOURCE                  |               |
| Association of Healthcare Workers   |               |
| DATE(S):  | AMT: \$550.00 |
| (if gift)   |               |
| ▶ MUST CHECK ONE: <input type="checkbox"/> Gift -or- <input checked="" type="checkbox"/> Income       |               |
| <input type="radio"/> Made a Speech/Participated in a Panel   |               |
| <input checked="" type="radio"/> Other - Provide Description: Travel reimbursement for board meeting. |               |
| ▶ If Gift, Provide Travel Destination   |               |

**Example:**

Mayor Kim travels to China on a trip organized by China Silicon Valley Business Development, a California nonprofit, 501(c)(6) organization. The Chengdu Municipal People's Government pays for Mayor Kim's airfare and travel costs, as well as his meals and lodging during the trip. The trip's agenda shows that the trip's purpose is to promote job creation and economic activity in China and in Silicon Valley, so the trip is reasonably related to a governmental purpose. Thus, Mayor Kim must report the gift of travel, but the gift is exempt from the gift limit. In this case, the travel payments are not subject to the gift limit because the source is a foreign government and because the travel is reasonably related to a governmental purpose. (Section 89506(a)(2).) Note that Mayor Kim could be disqualified from participating in or making decisions about The Chengdu Municipal People's Government for 12 months. Also note that if China Silicon Valley Business Development (a 501(c)(6) organization) paid for the travel costs rather than the governmental organization, the payments would be subject to the gift limits. (See the FPPC fact sheet, Limitations and Restrictions on Gifts, Honoraria, Travel and Loans, at [www.fppc.ca.gov](http://www.fppc.ca.gov).)

|   |                 |
|---|-----------------|
| ▶ NAME OF SOURCE (Not an Acronym)   |                 |
| Chengdu Municipal People's Government   |                 |
| ADDRESS (Business Address Acceptable)   |                 |
| 2 Caoshi St, CaoShiJie, Qingyang Qu, Chengdu Shi,   |                 |
| CITY AND STATE  |                 |
| Sichuan Sheng, China, 610000  |                 |
| <input type="checkbox"/> 501 (c)(3) or DESCRIBE BUSINESS ACTIVITY, IF ANY, OF SOURCE                  |                 |
| DATE(S):  | AMT: \$3,874.38 |
| (if gift)   |                 |
| ▶ MUST CHECK ONE: <input checked="" type="checkbox"/> Gift -or- <input type="checkbox"/> Income       |                 |
| <input type="radio"/> Made a Speech/Participated in a Panel   |                 |
| <input checked="" type="radio"/> Other - Provide Description: Travel reimbursement for trip to China. |                 |
| ▶ If Gift, Provide Travel Destination   |                 |
| Sichuan Sheng, China  |                 |

## Restrictions and Prohibitions

The Political Reform Act (Gov. Code Sections 81000-91014) requires most state and local government officials and employees to publicly disclose their economic interests including personal assets and income. The Act's conflict of interest provisions also disqualify a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on these economic interests as well as the official's personal finances and those of immediate family. (Gov. Code Sections 87100 and 87103.) The Fair Political Practices Commission (FPPC) is the state agency responsible for issuing the attached Statement of Economic Interests, Form 700, and for interpreting the Act's provisions.

### Gift Prohibition

Gifts received by most state and local officials, employees, and candidates are subject to a limit. In 2021-2022, the gift limit increased to \$520 from a single source during a calendar year. In 2019 and 2020, the gift limit was \$500 from a single source during a calendar year.

Additionally, state officials, state candidates, and certain state employees are subject to a \$10 limit per calendar month on gifts from lobbyists and lobbying firms registered with the Secretary of State. See Reference Pamphlet, page 10.

State and local officials and employees should check with their agency to determine if other restrictions apply.

### Disqualification

Public officials are, under certain circumstances, required to disqualify themselves from making, participating in, or attempting to influence governmental decisions that will affect their economic interests. This may include interests they are not required to disclose. For example, a personal residence is often not reportable, but may be grounds for disqualification. Specific disqualification requirements apply to 87200 filers (e.g., city councilmembers, members of boards of supervisors, planning commissioners, etc.). These officials must publicly identify the economic interest that creates a conflict of interest and leave the room before a discussion or vote takes place at a public meeting. For more information, consult Government Code Section 87105, Regulation 18707, and the Guide to Recognizing Conflicts of Interest page at [www.fppc.ca.gov](http://www.fppc.ca.gov).

### Honorarium Ban

Most state and local officials, employees, and candidates are prohibited from accepting an honorarium for any speech given, article published, or attendance at a conference, convention, meeting, or like gathering. (See Reference Pamphlet, page 10.)

### Loan Restrictions

Certain state and local officials are subject to restrictions on loans. (See Reference Pamphlet, page 14.)

### Post-Governmental Employment

There are restrictions on representing clients or employers before former agencies. The provisions apply to elected state officials, most state employees, local elected officials, county chief administrative officers, city managers, including the chief administrator of a city, and general managers or chief administrators of local special districts and JPAs. The FPPC website has fact sheets explaining the provisions.

### Late Filing

The filing officer who retains originally-signed or electronically filed statements of economic interests may impose on an individual a fine for any statement that is filed late. The fine is \$10 per day up to a maximum of \$100. Late filing penalties may be reduced or waived under certain circumstances.

Persons who fail to timely file their Form 700 may be referred to the FPPC's Enforcement Division (and, in some cases, to the Attorney General or district attorney) for investigation and possible prosecution. In addition to the late filing penalties, a fine of up to \$5,000 per violation may be imposed.

**For assistance** concerning reporting, prohibitions, and restrictions under the Act:

- Email questions to [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov).
- Call the FPPC toll-free at (866) 275-3772.

### Form 700 is a Public Document Public Access Must Be Provided

Statements of Economic Interests are public documents. The filing officer must permit any member of the public to inspect and receive a copy of any statement.

- Statements must be available as soon as possible during the agency's regular business hours, but in any event not later than the second business day after the statement is received. Access to the Form 700 is not subject to the Public Records Act procedures.
- No conditions may be placed on persons seeking access to the forms.
- No information or identification may be required from persons seeking access.
- Reproduction fees of no more than 10 cents per page may be charged.



## Questions and Answers

---

### General

- Q. What is the reporting period for disclosing interests on an assuming office statement or a candidate statement?
- A. On an assuming office statement, disclose all reportable investments, interests in real property, and business positions held on the date you assumed office. In addition, you must disclose income (including loans, gifts and travel payments) received during the 12 months prior to the date you assumed office.
- On a candidate statement, disclose all reportable investments, interests in real property, and business positions held on the date you file your declaration of candidacy. You must also disclose income (including loans, gifts and travel payments) received during the 12 months prior to the date you file your declaration of candidacy.

- Q. I hold two other board positions in addition to my position with the county. Must I file three statements of economic interests?
- A. Yes, three are required. However, you may instead complete an expanded statement listing the county and the two boards on the Cover Page or an attachment as the agencies for which you will be filing. Disclose all reportable economic interests in all three jurisdictions on the expanded statement. File the expanded statement for your primary position providing an original “wet” signature unless filed with a secure electronic signature. (See page 3 above.) File copies of the expanded statement with the other two agencies as required by Regulation 18723.1(c). Remember to complete separate statements for positions that you leave or assume during the year.

- Q. I am a department head who recently began acting as city manager. Should I file as the city manager?
- A. Yes. File an assuming office statement as city manager. Persons serving as “acting,” “interim,” or “alternate” must file as if they hold the position because they are or may be performing the duties of the position.

- Q. My spouse and I are currently separated and in the process of obtaining a divorce. Must I still report my spouse’s income, investments, and interests in real property?
- A. Yes. A public official must continue to report a spouse’s economic interests until such time as dissolution of marriage proceedings is final. However, if a separate property agreement has been reached prior to that time, your estranged spouse’s income may not have to be reported. Contact the FPPC for more information.
- Q. As a designated employee, I left one state agency to work for another state agency. Must I file a leaving office statement?
- A. Yes. You may also need to file an assuming office statement for the new agency.

### Investment Disclosure

- Q. I have an investment interest in shares of stock in a company that does not have an office in my jurisdiction. Must I still disclose my investment interest in this company?
- A. Probably. The definition of “doing business in the jurisdiction” is not limited to whether the business has an office or physical location in your jurisdiction. (See Reference Pamphlet, page 13.)
- Q. My spouse and I have a living trust. The trust holds rental property in my jurisdiction, our primary residence, and investments in diversified mutual funds. I have full disclosure. How is this trust disclosed?
- A. Disclose the name of the trust, the rental property and its income on Schedule A-2. Your primary residence and investments in diversified mutual funds registered with the SEC are not reportable.
- Q. I am required to report all investments. I have an IRA that contains stocks through an account managed by a brokerage firm. Must I disclose these stocks even though they are held in an IRA and I did not decide which stocks to purchase?
- A. Yes. Disclose on Schedule A-1 or A-2 any stock worth \$2,000 or more in a business entity located in or doing business in your jurisdiction.

## Questions and Answers Continued

- Q. The value of my stock changed during the reporting period. How do I report the value of the stock?
- A. You are required to report the highest value that the stock reached during the reporting period. You may use your monthly statements to determine the highest value. You may also use the entity's website to determine the highest value. You are encouraged to keep a record of where you found the reported value. Note that for an assuming office statement, you must report the value of the stock on the date you assumed office.
- Q. I am the sole owner of my business, an S-Corporation. I believe that the nature of the business is such that it cannot be said to have any "fair market value" because it has no assets. I operate the corporation under an agreement with a large insurance company. My contract does not have resale value because of its nature as a personal services contract. Must I report the fair market value for my business on Schedule A-2 of the Form 700?
- A. Yes. Even if there are no *tangible* assets, intangible assets, such as relationships with companies and clients are commonly sold to qualified professionals. The "fair market value" is often quantified for other purposes, such as marital dissolutions or estate planning. In addition, the IRS presumes that "personal services corporations" have a fair market value. A professional "book of business" and the associated goodwill that generates income are not without a determinable value. The Form 700 does not require a precise fair market value; it is only necessary to check a box indicating the broad range within which the value falls.
- Q. I own stock in IBM and must report this investment on Schedule A-1. I initially purchased this stock in the early 1990s; however, I am constantly buying and selling shares. Must I note these dates in the "Acquired" and "Disposed" fields?
- A. No. You must only report dates in the "Acquired" or "Disposed" fields when, during the reporting period, you initially purchase a reportable investment worth \$2,000 or more or when you dispose of the entire investment. You are not required to track the partial trading of an investment.
- Q. On last year's filing I reported stock in Encoe valued at \$2,000 - \$10,000. Late last year the value of this stock fell below and remains at less than \$2,000. How should this be reported on this year's statement?
- A. You are not required to report an investment if the value was less than \$2,000 during the **entire** reporting period. However, because a disposed date is not required for stocks that fall below \$2,000, you may want to report the stock and note in the "comments" section that the value fell below \$2,000. This would be for informational purposes only; it is not a requirement.
- Q. We have a Section 529 account set up to save money for our son's college education. Is this reportable?
- A. If the Section 529 account contains reportable interests (e.g., common stock valued at \$2,000 or more), those interests are reportable (not the actual Section 529 account). If the account contains solely mutual funds, then nothing is reported.

### Income Disclosure

- Q. I reported a business entity on Schedule A-2. Clients of my business are located in several states. Must I report all clients from whom my pro rata share of income is \$10,000 or more on Schedule A-2, Part 3?
- A. No, only the clients located in or doing business on a regular basis in your jurisdiction must be disclosed.
- Q. I believe I am not required to disclose the names of clients from whom my pro rata share of income is \$10,000 or more on Schedule A-2 because of their right to privacy. Is there an exception for reporting clients' names?
- A. Regulation 18740 provides a procedure for requesting an exemption to allow a client's name not to be disclosed if disclosure of the name would violate a legally recognized privilege under California or Federal law. This regulation may be obtained from our website at [www.fppc.ca.gov](http://www.fppc.ca.gov). (See Reference Pamphlet, page 14.)

## Questions and Answers Continued

---

Q. I am sole owner of a private law practice that is not reportable based on my limited disclosure category. However, some of the sources of income to my law practice are from reportable sources. Do I have to disclose this income?

A. Yes, even though the law practice is not reportable, reportable sources of income to the law practice of \$10,000 or more must be disclosed. This information would be disclosed on Schedule C with a note in the "comments" section indicating that the business entity is not a reportable investment. The note would be for informational purposes only; it is not a requirement.

Q. I am the sole owner of my business. Where do I disclose my income - on Schedule A-2 or Schedule C?

A. Sources of income to a business in which you have an ownership interest of 10% or greater are disclosed on Schedule A-2. (See Reference Pamphlet, page 8.)

Q. My husband is a partner in a four-person firm where all of his business is based on his own billings and collections from various clients. How do I report my community property interest in this business and the income generated in this manner?

A. If your husband's investment in the firm is 10% or greater, disclose 100% of his share of the business on Schedule A-2, Part 1 and 50% of his income on Schedule A-2, Parts 2 and 3. For example, a client of your husband's must be a source of at least \$20,000 during the reporting period before the client's name is reported.

Q. How do I disclose my spouse's or registered domestic partner's salary?

A. Report the name of the employer as a source of income on Schedule C.

Q. I am a doctor. For purposes of reporting \$10,000 sources of income on Schedule A-2, Part 3, are the patients or their insurance carriers considered sources of income?

A. If your patients exercise sufficient control by selecting you instead of other doctors, then your patients, rather than their insurance carriers, are sources of income to you. (See Reference Pamphlet, page 14.)

Q. I received a loan from my grandfather to purchase my home. Is this loan reportable?

A. No. Loans received from family members are not reportable.

Q. Many years ago, I loaned my parents several thousand dollars, which they paid back this year. Do I need to report this loan repayment on my Form 700?

A. No. Payments received on a loan made to a family member are not reportable.

### Real Property Disclosure

Q. During this reporting period we switched our principal place of residence into a rental. I have full disclosure and the property is located in my agency's jurisdiction, so it is now reportable. Because I have not reported this property before, do I need to show an "acquired" date?

A. No, you are not required to show an "acquired" date because you previously owned the property. However, you may want to note in the "comments" section that the property was not previously reported because it was used exclusively as your residence. This would be for informational purposes only; it is not a requirement.

Q. I am a city manager, and I own a rental property located in an adjacent city, but one mile from the city limit. Do I need to report this property interest?

A. Yes. You are required to report this property because it is located within 2 miles of the boundaries of the city you manage.

Q. Must I report a home that I own as a personal residence for my daughter?

A. You are not required to disclose a home used as a personal residence for a family member unless you receive income from it, such as rental income.

Q. I am a co-signer on a loan for a rental property owned by a friend. Since I am listed on the deed of trust, do I need to report my friend's property as an interest in real property on my Form 700?

A. No. Simply being a co-signer on a loan for property does not create a reportable interest in that real property.

## Questions and Answers Continued

---

### Gift Disclosure

- Q. If I received a reportable gift of two tickets to a concert valued at \$100 each, but gave the tickets to a friend because I could not attend the concert, do I have any reporting obligations?
- A. Yes. Since you accepted the gift and exercised discretion and control of the use of the tickets, you must disclose the gift on Schedule D.
- Q. Julia and Jared Benson, a married couple, want to give a piece of artwork to a county supervisor. Is each spouse considered a separate source for purposes of the gift limit and disclosure?
- A. Yes, each spouse may make a gift valued at the gift limit during a calendar year. For example, during 2021 the gift limit was \$520, so the Bensons may have given the supervisor artwork valued at no more than \$1,040. The supervisor must identify Jared and Julia Benson as the sources of the gift.
- Q. I am a Form 700 filer with full disclosure. Our agency holds a holiday raffle to raise funds for a local charity. I bought \$10 worth of raffle tickets and won a gift basket valued at \$120. The gift basket was donated by Doug Brewer, a citizen in our city. At the same event, I bought raffle tickets for, and won a quilt valued at \$70. The quilt was donated by a coworker. Are these reportable gifts?
- A. Because the gift basket was donated by an outside source (not an agency employee), you have received a reportable gift valued at \$110 (the value of the basket less the consideration paid). The source of the gift is Doug Brewer and the agency is disclosed as the intermediary. Because the quilt was donated by an employee of your agency, it is not a reportable gift.
- Q. My agency is responsible for disbursing grants. An applicant (501(c)(3) organization) met with agency employees to present its application. At this meeting, the applicant provided food and beverages. Would the food and beverages be considered gifts to the employees? These employees are designated in our agency's conflict of interest code and the applicant is a reportable source of income under the code.
- A. Yes. If the value of the food and beverages consumed by any one filer, plus any other gifts received from the same source during the reporting period total \$50 or more, the food and beverages would be reported using the fair market value and would be subject to the gift limit.
- Q. I received free admission to an educational conference related to my official duties. Part of the conference fees included a round of golf. Is the value of the golf considered informational material?
- A. No. The value of personal benefits, such as golf, attendance at a concert, or sporting event, are gifts subject to reporting and limits.

**2021/2022  
Form 700  
Statement of  
Economic Interests**

---



**Reference  
Pamphlet**

**California Fair Political Practices Commission**  
1102 Q Street, Suite 3000 • Sacramento, CA 95811  
Email advice: [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)  
Toll-free advice line: 1 (866) ASK-FPPC • (866) 275-3772  
Telephone: (916) 322-5660 • Website: [www.fppc.ca.gov](http://www.fppc.ca.gov)

December 2021

# Contents

---

- Who Must File ..... Page 3
- Types of Form 700 Filings..... Page 4
- Where to File..... Page 5
- When to File..... Page 6
- Terms & Definitions ..... Page 8

## Who Must File

---

### 1. Officials and Candidates Specified in Gov. Code Section 87200 and Members of Boards and Commissions of Newly Created Agencies

The Act requires the following individuals to fully disclose their personal assets and income described in Form 700, Statement of Economic Interests:

#### State Offices

- Governor
- Lieutenant Governor
- Attorney General
- Controller
- Insurance Commissioner
- Secretary of State
- Treasurer
- Members of the State Legislature
- Superintendent of Public Instruction
- State Board of Equalization Members
- Public Utilities Commissioners
- State Energy Resources Conservation and Development Commissioners
- State Coastal Commissioners
- Fair Political Practices Commissioners
- State public officials (including employees and consultants) who manage public investments
- Elected members of and candidates for the Board of Administration of the California Public Employees' Retirement System
- Elected members of and candidates for the Teachers' Retirement Board
- Members of the High Speed Rail Authority

Other officials and employees of state boards, commissions, agencies, and departments file Form 700 as described in Part 2 on this page.

#### Judicial Offices

- Supreme, Appellate, and Superior Court Judges
- Court Commissioners
- Retired Judges, Pro-Tem Judges, and part-time Court Commissioners who serve or expect to serve 30 days or more in a calendar year

#### County and City Offices

- Members of Boards of Supervisors
- Mayors and Members of City Councils
- Chief Administrative Officers
- District Attorneys
- County Counsels
- City Attorneys
- City Managers
- Planning Commissioners
- County and City Treasurers
- County and city public officials (including employees and consultants) who manage public investments

#### Members of Newly Created Boards and Commissions

Generally, such a member must file an assuming office statement within 30 days as well as subsequent statements until the member's position is designated in a conflict of interest code. See Regulation 18754.

### 2. State and Local Officials, Employees, Candidates, and Consultants Designated in a Conflict of Interest Code ("Code Filers")

The Act requires every state and local government agency to adopt a unique conflict of interest code. The code lists each position within the agency filled by individuals who make or participate in making governmental decisions that could affect their personal economic interests.

The code requires individuals holding those positions to periodically file Form 700 disclosing certain personal economic interests as determined by the code's "disclosure categories." These individuals are called "designated employees" or "code filers."

Obtain your disclosure categories from your agency – they are not contained in the Form 700. Persons with broad decisionmaking authority must disclose more interests than those in positions with limited discretion. For example, you may be required to disclose only investments and business positions in or income (including loans, gifts, and travel payments) from businesses of the type that contract with your agency, or you may not be required to disclose real property interests.

In addition, certain consultants to public agencies may qualify as public officials because they make, participate in making, or act in a staff capacity for governmental decisions. Agencies determine who is a consultant and the level of disclosure and may use Form 805.

Note: An official who holds a position specified in Gov. Code Section 87200 is not required to file statements under the conflict of interest code of any agency that has the same or a smaller jurisdiction (for example, a state legislator who also sits on a state or local board or commission).

#### Employees in Newly Created Positions of Existing Agencies

An individual hired for a position not yet covered under an agency's conflict of interest code must file Form 700 if the individual serves in a position that makes or participates in making governmental decisions. These individuals must file under the agency's broadest disclosure category until the code is amended to include the new position unless the agency has provided in writing a limited disclosure requirement. The Form 804 may be used to satisfy this requirement.

## Types of Form 700 Filings

---

### Assuming Office Statement:

If you are a newly appointed official or are newly employed in a position designated, or that will be designated, in a state or local agency's conflict of interest code, your assuming office date is the date you were sworn in or otherwise authorized to serve in the position. If you are a newly elected official, your assuming office date is the date you were sworn in.

- Report: Investments, interests in real property, and business positions held on the date you assumed the office or position must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the date you assumed the office or position.

For positions subject to confirmation by the State Senate or the Commission on Judicial Appointments, your assuming office date is the date you were appointed or nominated to the position.

- Example: Maria Lopez was nominated by the Governor to serve on a state agency board that is subject to state Senate confirmation. The assuming office date is the date Maria's nomination is submitted to the Senate. Maria must report investments, interests in real property, and business positions she holds on that date, and income (including loans, gifts, and travel payments) received during the 12 months prior to that date.

If your office or position has been added to a newly adopted or newly amended conflict of interest code, use the effective date of the code or amendment, whichever is applicable.

- Report: Investments, interests in real property, and business positions held on the effective date of the code or amendment must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the effective date of the code or amendment.

### Annual Statement:

Generally, the period covered is January 1, 2021, through December 31, 2021. If the period covered by the statement is different than January 1, 2021, through December 31, 2021, (for example, you assumed office between October 1, 2020, and December 31, 2020 or you are combining statements), you must specify the period covered.

- Investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during the period covered by the statement must be reported. Do not change the preprinted dates on Schedules A-1, A-2, and B unless you are required to report the acquisition or disposition of an interest that did not occur in 2021.

- If your disclosure category changes during a reporting period, disclose under the old category until the effective date of the conflict of interest code amendment and disclose under the new disclosure category through the end of the reporting period.

### Leaving Office Statement:

Generally, the period covered is January 1, 2021, through the date you stopped performing the duties of your position. If the period covered differs from January 1, 2021, through the date you stopped performing the duties of your position (for example, you assumed office between October 1, 2020, and December 31, 2020, or you are combining statements), the period covered must be specified. The reporting period can cover parts of two calendar years.

- Report: Investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during the period covered by the statement. Do not change the preprinted dates on Schedules A-1, A-2, and B unless you are required to report the acquisition or disposition of an interest that did not occur in 2021.

### Candidate Statement:

If you are filing a statement in connection with your candidacy for state or local office, investments, interests in real property, and business positions held on the date of filing your declaration of candidacy must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the date of filing your declaration of candidacy is reportable. Do not change the preprinted dates on Schedules A-1, A-2, and B.

Candidates running for local elective offices (e.g., county sheriffs, city clerks, school board trustees, or water district board members) must file candidate statements, as required by the conflict of interest code for the elected position. The code may be obtained from the agency of the elected position.

### Amendments:

If you discover errors or omissions on any statement, file an amendment as soon as possible. You are only required to amend the schedule that needs to be revised; it is not necessary to refile the entire form. Obtain amendment schedules from the FPPC website at [www.fppc.ca.gov](http://www.fppc.ca.gov).



# Where to File

## 1. Officials Specified in Gov. Code Section 87200 (See Reference Pamphlet, page 3):

In most cases, the filing officials listed below will retain a copy of your statement and forward the original to the FPPC.

| Filers  | Where to File  |
|---|--|
| <b>87200 Filers</b>                           |  |
| State offices                                 | Your agency  |
| Judicial offices                              | The clerk of your court  |
| Retired Judges                                | Directly with FPPC   |
| County offices                                | Your county filing official  |
| City offices                                  | Your city clerk  |
| Multi-County offices                          | Your agency  |
| <b>87200 Candidates</b>                       |  |
| State offices                                 | County elections official with whom you file your declaration of candidacy |
| Judicial offices                              |  |
| Multi-County offices                          |  |
| County offices                                | County elections official  |
| City offices                                  | City Clerk   |
| Public Employees' Retirement System (CalPERS) | CalPERS  |
| State Teachers' Retirement Board (CalSTRS)    | CalSTRS  |

**Note:** Individuals that invest public funds for a city or county agency must file Form 700 with the agency. Unlike most other 87200 filers, the original statement will **not** be forwarded to the FPPC pursuant to Regulation 18753.

## 2. Code Filers — State and Local Officials, Employees, Candidates, and Consultants Designated in a Conflict of interest Code:

File with your agency, board, or commission unless otherwise specified in your agency's conflict of interest code. In most cases, the agency, board, or commission will retain the statements.

Candidates for local elective offices designated in a conflict of interest code file with the elections office where the declaration of candidacy or other nomination documents are filed.

## 3. Members of Newly Created Boards and Commissions:

File with your agency or with your agency's code reviewing body. See Regulation 18754.

State Senate and Assembly staff members file statements directly with the FPPC.

Exceptions:

- Elected state officers are not required to file statements under any agency's conflict of interest code.
- Filers listed in Section 87200 are not required to file statements under any agency's conflict of interest code in the same jurisdiction. For example, a county supervisor who is appointed to serve in an agency with jurisdiction in the same county has no additional filing obligations.

## 4. Positions Not Yet Covered Under a Conflict of interest Code

An individual hired for a position not yet covered under an agency's conflict of interest code must file Form 700 if the individual serves in a position that makes or participates in making governmental decisions. These individuals must file under the broadest disclosure category until the code is amended to include the new position unless the agency has provided in writing a limited disclosure requirement. Agencies may use FPPC Form 804 for this disclosure. Such individuals are referred to as "code filers." See Regulation 18734.

# When to File

## Assuming Office Statements:

| Filer   | Deadline  |
|---|---|
| Elected officials   | <b>30 days</b> after assuming office  |
| Appointed positions specified in Gov. Code Section 87200<br><br><b>or</b><br>Members of newly created boards and commissions not covered by a conflict of interest code | <b>30 days</b> after assuming office<br><br><b>or</b><br><b>10 days</b> after appointment or nomination if subject to Senate or judicial confirmation |
| Other appointed positions (including those held by newly-hired employees) that are or will be designated in a conflict of interest code                                 | <b>30 days</b> after assuming office (30 days after appointment or nomination if subject to Senate confirmation)                                      |
| Positions newly added to a new or amended conflict of interest code   | <b>30 days</b> after the effective date of the code or code amendment   |

### Exceptions:

- Elected state officers who assume office in December or January are not required to file an assuming office statement, but will file the next annual statement due.
- If you complete a term of office and, within 30 days, begin a new term of the same office (for example, you are reelected or reappointed), you are not required to file an assuming office statement. Instead, you will simply file the next annual statement due.
- If you leave an office specified in Gov. Code Section 87200 and, within 45 days, you assume another office or position specified in Section 87200 that has the same jurisdiction (for example, a city planning commissioner elected as mayor), you are not required to file an assuming office statement. Instead, you will simply file the next annual statement due.
- If you transfer from one designated position to another designated position within the same agency, contact your filing officer or the FPPC to determine your filing obligations.
- If a due date falls on a weekend or an official state holiday, the due date is the next regular business day.

**Late statements are subject to a late fine of \$10 per day per position up to \$100 for each day the statement is late.**

## Annual Statements:

- Elected state officers (including members of the state legislature, members elected to the Board of Administration of the California Public Employees' Retirement System and members elected to the Teachers' Retirement Board);  
Judges and court commissioners; and  
Members of state boards and commissions specified in Gov. Code Section 87200:  
File no later than **Tuesday, March 1, 2022.**
- County and city officials specified in Gov. Code Section 87200:  
File no later than **Friday, April 1, 2022.**
- Multi-County officials:  
File no later than **Friday, April 1, 2022.**
- State and local officials and employees designated in a conflict of interest code:  
File on the date prescribed in the code (April 1 for most filers).

### Exception:

If you assumed office between October 1, 2021, and December 31, 2021, and filed an assuming office statement, you are not required to file an annual statement until March 1, 2023, or April 1, 2023, whichever is applicable. The annual statement will cover the day after you assumed office through December 31, 2022.

Incumbent officeholders who file candidate statements also must file annual statements by the specified deadlines.

## When to File - (continued)

---

### Leaving Office Statements:

Leaving office statements must be filed no later than 30 days after leaving the office or position.

Exceptions:

- If you complete a term of office and, within 30 days, begin a new term of the same office (for example, you are reelected or reappointed), you are not required to file a leaving office statement. Instead, you will simply file the next annual statement due.
- If you leave an office specified in Gov. Code Section 87200 and, within 45 days, you assume another office or position specified in Section 87200 that has the same jurisdiction (for example, a city planning commissioner elected as mayor), you are not required to file a leaving office statement. Instead, you will simply file the next annual statement due.
- If you transfer from one designated position to another designated position within the same agency, contact your filing officer or the FPPC to determine your filing obligations.

### Candidate Statements:

All candidates (including incumbents) for offices specified in Gov. Code Section 87200 must file statements no later than the final filing date for their declaration of candidacy.

Candidates seeking a position designated in a conflict of interest code must file no later than the final filing date for the declaration of candidacy or other nomination documents.

Exception:

A candidate statement is not required if you filed an assuming office or annual statement for the same jurisdiction **within 60 days** before filing a declaration of candidacy or other nomination documents.

### Late Statements:

Late statements should be submitted as soon as possible after the filing deadline, in the same manner and place as a timely filed statement.

The filing officer who retains originally-signed or electronically filed statements of economic interests may impose on an individual a fine for any statement that is filed late. The fine is \$10 per day up to a maximum of \$100. Late filing penalties may be reduced or waived under certain circumstances.

Persons who fail to timely file their Form 700 may be referred to the FPPC's Enforcement Division (and, in some cases, to the Attorney General or District Attorney) for investigation and possible prosecution. In addition to the late filing penalties from the filing officer, a fine of up to \$5,000 per violation may be imposed.

## Terms & Definitions

---

The instructions located on the back of each schedule describe the types of interests that must be reported. The purpose of this section is to explain other terms used in Form 700 that are not defined in the instructions to the schedules or elsewhere.

**Blind Trust:** See Trusts, Reference Pamphlet, page 16.

**Business Entity:** Any organization or enterprise operated for profit, including a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association. This would include a business for which you take business deductions for tax purposes (for example, a small business operated in your home).

**Code Filer:** An individual who has been designated in a state or local agency's conflict of interest code to file statements of economic interests.

An individual hired on or after January 1, 2021 for a position not yet covered under an agency's conflict of interest code must file Form 700 if the individual serves in a position that makes or participates in making governmental decisions. These individuals must file under the broadest disclosure category until the code is amended to include the new position unless the agency has provided in writing a limited disclosure requirement. Agencies may use FPPC Form 804 for such disclosure. See Regulation 18734.

**Commission Income:** "Commission income" means gross payments of \$500 or more received during the period covered by the statement as a broker, agent, or salesperson, including insurance brokers or agents, real estate brokers or agents, travel agents or salespersons, stockbrokers, and retail or wholesale salespersons, among others.

In addition, you may be required to disclose the names of sources of commission income if your pro rata share of the gross income was \$10,000 or more from a single source during the reporting period. If your spouse or registered domestic partner received commission income, you would disclose your community property share (50%) of that income (that is, the names of sources of \$20,000 or more in gross commission income received by your spouse or registered domestic partner).

Report commission income as follows:

- If the income was received through a business entity in which you and your spouse or registered domestic partner had a 10% or greater ownership interest (or if you receive commission income on a regular basis as an independent contractor or agent), use Schedule A-2.
- If the income was received through a business entity in which you or your spouse or registered domestic partner **did not receive commission income on a regular basis** or you had a less than 10% ownership interest, use Schedule C.

The "source" of commission income generally includes all parties to a transaction, and each is attributed the full value of the commission.

Examples:

- You are a partner in Jameson and Mulligan Insurance Company and have a 50% ownership interest in the company. You sold two Businessmen's Insurance Company policies to XYZ Company during the reporting period. You received commission income of \$5,000 from the first transaction and \$6,000 from the second. On Schedule A-2, report your partnership interest in and income received from Jameson and Mulligan Insurance Company in Parts 1 and 2. In Part 3, list both Businessmen's Insurance Company and XYZ Company as sources of \$10,000 or more in commission income.
- You are a stockbroker for Prince Investments, but you have no ownership interest in the firm. You receive commission income on a regular basis through the sale of stock to clients. Your total gross income from your employment with Prince Investments was over \$100,000 during the reporting period. On Schedule A-2, report your name as the name of the business entity in Part 1 and the gross income you have received in Part 2. (Because you are an employee of Prince Investments, you do not need to complete the information in the box in Part 1 indicating the general description of business activity, fair market value, or nature of investment.) In Part 3, list Prince Investments and the names of any clients who were sources of \$10,000 or more in commission income to you.
- You are a real estate agent and an independent contractor under Super Realty. On Schedule A-2, Part 1, in addition to your name or business name, complete the business entity description box. In Part 2, identify your gross income. In Part 3, for each transaction that resulted in commission income to you of \$10,000 or more, you must identify the brokerage entity, each person you represented, and any person who received a finder's or other referral fee for referring a party to the transaction to the broker.

Note: If your pro rata share of commission income from a single source is \$500 or more, you may be required to disqualify yourself from decisions affecting that source of income, even though you are not required to report the income. (See *Reference Pamphlet, page 12.*)

## Terms & Definitions - (continued)

**Conflict of Interest:** A public official or employee has a conflict of interest under the Act when all of the following occur:

- The official makes, participates in making, or uses their official position to influence a governmental decision;
- It is reasonably foreseeable that the decision will affect the official's economic interest;
- The effect of the decision on the official's economic interest will be material; and
- The effect of the decision on the official's economic interest will be different than its effect on the public generally.

**Conflict of Interest Code:** The Act requires every state and local government agency to adopt a conflict of interest code. The code may be contained in a regulation, policy statement, or a city or county ordinance, resolution, or other document.

An agency's conflict of interest code must designate all officials and employees of, and consultants to, the agency who make or participate in making governmental decisions that could cause conflicts of interest. These individuals are required by the code to file statements of economic interests and to disqualify themselves when conflicts of interest occur.

The disclosure required under a conflict of interest code for a particular designated official or employee should include only the kinds of personal economic interests they could significantly affect through the exercise of their official duties. For example, an employee whose duties are limited to reviewing contracts for supplies, equipment, materials, or services provided to the agency should be required to report only those interests they hold that are likely to be affected by the agency's contracts for supplies, equipment, materials, or services.

**Consultant:** An individual who contracts with or whose employer contracts with state or local government agencies and who makes, participates in making, or acts in a staff capacity for making governmental decisions. The agency determines who is a consultant. Consultants may be required to file Form 700. Such consultants would file under full disclosure unless the agency provides in writing a limited disclosure requirement. Agencies may use FPPC Form 805 to assign such disclosure. The obligation to file Form 700 is always imposed on the individual who is providing services to the agency, not on the business or firm that employs the individual.

FPPC Regulation 18700.3 defines "consultant" as an individual who makes a governmental decision whether to:

- Approve a rate, rule, or regulation
- Adopt or enforce a law
- Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement
- Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval
- Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract
- Grant agency approval to a plan, design, report, study, or similar item
- Adopt, or grant agency approval of, policies, standards, or guidelines for the agency or for any of its subdivisions

A consultant also is an individual who serves in a staff capacity with the agency and:

- participates in making a governmental decision; or
- performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's conflict of interest code.

**Designated Employee:** An official or employee of a state or local government agency whose position has been designated in the agency's conflict of interest code to file statements of economic interests or whose position has not yet been listed in the code but makes or participates in making governmental decisions. Individuals who contract with government agencies (consultants) may also be designated in a conflict of interest code.

A federal officer or employee serving in an official federal capacity on a state or local government agency is not a designated employee.

**Disclosure Categories:** The section of an agency's conflict of interest code that specifies the types of personal economic interests officials and employees of the agency must disclose on their statements of economic interests. Disclosure categories are usually contained in an appendix or attachment to the conflict of interest code. Contact your agency to obtain a copy of your disclosure categories.

## Terms & Definitions - (continued)

**Diversified Mutual Fund:** Diversified portfolios of stocks, bonds, or money market instruments that are managed by investment companies whose business is pooling the money of many individuals and investing it to seek a common investment goal. Mutual funds are managed by trained professionals who buy and sell securities. A typical mutual fund will own between 75 to 100 separate securities at any given time so they also provide instant diversification. *Only diversified mutual funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 are exempt from disclosure.* In addition, Regulation 18237 provides an exception from reporting other funds that are similar to diversified mutual funds. (See Reference Pamphlet, page 13.)

**Elected State Officer:** Elected state officers include the Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, State Controller, Secretary of State, State Treasurer, Superintendent of Public Instruction, members of the State Legislature, members of the State Board of Equalization, elected members of the Board of Administration of the California Public Employees' Retirement System and members elected to the Teachers' Retirement Board.

**Enforcement:** The FPPC investigates suspected violations of the Act. Other law enforcement agencies (the Attorney General or district attorney) also may initiate investigations under certain circumstances. If violations are found, the Commission may initiate administrative enforcement proceedings that could result in fines of up to \$5,000 per violation.

Instead of administrative prosecution, a civil action may be brought for negligent or intentional violations by the appropriate civil prosecutor (the Commission, Attorney General, or district attorney), or a private party residing within the jurisdiction. In civil actions, the measure of damages is up to the amount or value not properly reported.

Persons who violate the conflict of interest disclosure provisions of the Act also may be subject to agency discipline, including dismissal.

Finally, a knowing or willful violation of any provision of the Act is a misdemeanor. Persons convicted of a misdemeanor may be disqualified for four years from the date of the conviction from serving as a lobbyist or running for elective office, in addition to other penalties that may be imposed. The Act also provides for numerous civil penalties, including monetary penalties and damages, and injunctive relief from the courts.

**Expanded Statement:** In some circumstances, an official or an employee who holds multiple positions subject to filing obligations (for example, a city council member who also holds a designated position with a county agency, board, or commission) may complete one expanded statement for all those positions. The expanded statement must disclose all reportable interests for all jurisdictions and list all positions for which it is filed. The rules and processes governing the filing of an expanded statement are set forth in Regulation 18723.1.

**Fair Market Value:** When reporting the value of an investment, interest in real property, or gift, you must disclose the fair market value – the price at which the item would sell for on the open market. This is particularly important when valuing gifts, because the fair market value of a gift may be different from the amount it cost the donor to provide the gift. For example, the wholesale cost of a bouquet of flowers may be \$10, but the fair market value may be \$25 or more. In addition, there are special rules for valuing free tickets and passes. Call or email the FPPC for assistance.

### Gift and Honoraria Prohibitions

#### Gifts:

State and local officials who are listed in Gov. Code Section 87200 (except judges – see below), candidates for these elective offices (including judicial candidates), and officials and employees of state and local government agencies who are designated in a conflict of interest code were prohibited from accepting a gift or gifts totaling more than \$500 in a calendar year from a single source in 2019-2020. The gift limit is \$520 in 2021 and 2022.

In addition, elected state officers, candidates for elective state offices, and officials and employees of state agencies are subject to a \$10 per calendar month limit on gifts from lobbyists and lobbying firms registered with the Secretary of State.

## Terms & Definitions - (continued)

### Honoraria:

State and local officials who are listed in Gov. Code Section 87200 (except judges – see below), candidates for these elective offices (including judicial candidates), and employees of state and local government agencies who are designated in a conflict of interest code are prohibited from accepting honoraria for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

### Exceptions:

- Some gifts are not reportable or subject to the gift and honoraria prohibitions, and other gifts may not be subject to the prohibitions, but are reportable. For detailed information, see the FPPC fact sheet entitled “Limitations and Restrictions on Gifts, Honoraria, Travel, and Loans,” which can be obtained from your filing officer or the FPPC website ([www.fppc.ca.gov](http://www.fppc.ca.gov)).
- The gift limit and the honorarium prohibitions do not apply to a part-time member of the governing board of a public institution of higher education, unless the member is also an elected official.
- If you are designated in a state or local government agency’s conflict of interest code, the gift limit and honorarium prohibition are applicable only to sources you would otherwise be required to report on your statement of economic interests. However, this exception is not applicable if you also hold a position listed in Gov. Code Section 87200 (See Reference Pamphlet, page 3.)
- For state agency officials and employees, the \$10 lobbyist/lobbying firm gift limit is applicable only to lobbyists and lobbying firms registered to lobby your agency. This exception is not applicable if you are an elected state officer or a member or employee of the State Legislature.
- Payments for articles published as part of the practice of a bona fide business, trade, or profession, such as teaching, are not considered honoraria. A payment for an “article published” that is customarily provided in connection with teaching includes text book royalties and payments for academic tenure review letters. An official is presumed to be engaged in the bona fide profession of teaching if they are employed to teach at an accredited university.

### Judges:

Section 170.9 of the Code of Civil Procedure imposes gift limits on judges and prohibits judges from accepting any honorarium. Section 170.9 is enforced by the Commission on Judicial Performance. The FPPC has no authority to interpret or enforce the Code of Civil Procedure. Court commissioners are subject to the gift limit under the Political Reform Act.

**Income Reporting:** Reporting income under the Act is different than reporting income for tax purposes. The Act requires **gross** income (the amount received before deducting losses, expenses, or taxes, as well as income reinvested in a business entity) to be reported.

**Pro Rata Share:** The instructions for reporting income refer to your pro rata share of the income received. Your pro rata share is normally based on your ownership interest in the entity or property. For example, if you are a sole proprietor, you must disclose 100% of the gross income to the business entity on Schedule A-2. If you own 25% of a piece of rental property, you must report 25% of the gross rental income received. When reporting your community property interest in your spouse’s or registered domestic partner’s income, your pro rata share is 50% of their income.

**Separate Property Agreement:** Generally, a public official is required to disclose their community property share of their spouse’s income. But, when a public official and their spouse have a legally separate property agreement (e.g., prenuptial agreement), the official is not required to report the spouse’s community property share of income, unless the funds are commingled with community funds or used to pay for community expenses or to produce or enhance the separate income of the official.

**Note:** This reporting exception does not apply to investments and interests in real property. Even if a public official and their spouse have a separate property agreement, the spouse’s investments and interests in real property must still be disclosed because the definitions of reportable investments and interests in real property include those held by the official’s immediate family (spouse, registered domestic partner, and dependent children). These definitions are not dependent on community property law.

**Income to a Business Entity:** When you are required to report sources of income to a business entity, sources of rental income, or sources of commission income, you are only required to disclose individual sources of income of \$10,000 or more. However, you may be required to **disqualify** yourself from decisions affecting sources of \$500 or more in income, even though you are not required to report them.

### Examples:

- Alice Ruiz is a partner in a business entity. She has a 25% interest. On Schedule A-2, she must disclose 25% of the fair market value of the business entity; 25% of the gross income to the business entity (even though all of the income received was reinvested in the business and she did not personally receive any income from the business); and the name of each source of \$40,000 or more to the business.

## Terms & Definitions - (continued)

- Pat and Mark Johnson, a married couple, own Classic Autos. Income to this business was \$200,000. In determining the amount to report for income on Schedule A-2, Part 2, Mark must include his 50% share (\$100,000) and 50% of his spouse's share (\$50,000). Thus, his reportable income would be \$150,000 and he will check the box indicating \$100,001-\$1,000,000. (See Reference Pamphlet, page 13, for an example of how to calculate the value of this investment and interest in real property.)

### You are not required to report:

- Salary, reimbursement for expenses or per diem, social security, disability, or other similar benefit payments received by you or your spouse or registered domestic partner from a federal, state, or local government agency
- A travel payment that was received from a nonprofit entity exempt from taxation under Internal Revenue Code Section 501(c)(3) for which you provided equal or greater consideration, such as reimbursement for travel on business for a 501(c)(3) organization for which you are a board member.
- Campaign contributions
- A cash bequest or cash inheritance
- Returns on a security registered with the Securities and Exchange Commission, including dividends, interest, or proceeds from a sale of stocks or bonds unless the purchaser can be identified.
- Redemption of a mutual fund
- Payments received under an insurance policy, including an annuity
- Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union, an insurance policy, or a bond or other debt instrument issued by a government agency
- Your spouse's or registered domestic partner's income that is legally "separate" income so long as the funds are not commingled with community funds or used to pay community expenses
- Income of dependent children
- Automobile trade-in allowances from dealers
- Loans and loan repayments received from your spouse or registered domestic partner, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin unless they were acting as an intermediary or agent for any person not covered by this provision
- Alimony or child support payments
- Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a)

- Any loan from a commercial lending institution made in the lender's regular course of business on terms available to the public without regard to your official status
- Any retail installment or credit card debts incurred in the creditor's regular course of business on terms available to the public without regard to your official status
- Loans made to others. However, repayments may be reportable on Schedule C
- A loan you co-signed for another person unless you made payments on the loan during the reporting period

**Incentive Compensation:** "Incentive compensation" means income over and above salary that is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official's employer which correlates to the conduct of the purchaser in direct response to the effort of the official.

Incentive compensation does not include:

- Salary
- Commission income (*For information regarding disclosure of "commission income," see Reference Pamphlet, page 8.*)
- Bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum
- Executive incentive plans based on company performance, provided that the formula for determining the amount of the executive's incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company
- Payments for personal services which are not marketing or sales

The purchaser is a source of income to the official if all three of the following apply:

- the official's employment responsibilities include directing sales or marketing activity toward the purchaser; and
- there is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and
- there is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.



## Terms & Definitions - (continued)

Report incentive compensation as follows:

- In addition to salary, reimbursement of expenses, and other income received from your employer, separately report on Schedule C the name of each person who purchased products or services sold, marketed or represented by you if you received incentive compensation of \$500 or more attributable to the purchaser during the period covered by the statement.
- If incentive compensation is paid by your employer in a lump sum, without allocation of amounts to specific customers, you must determine the amount of incentive compensation attributable to each of your customers. This may be based on the volume of sales to those customers.

(See Regulations 18700.1 and 18728.5 for more information.)

**Investment Funds:** The term “investment” no longer includes certain exchange traded funds, closed-end funds, or funds held in an Internal Revenue Code qualified plan. These non-reportable investment funds (1) must be bona fide investment funds that pool money from more than 100 investors, (2) must hold securities of more than 15 issuers, and (3) cannot have a stated policy of concentrating their holdings in the same industry or business (“sector funds”). In addition, the filer may not influence or control the decision to purchase or sell the specific fund on behalf of their agency during the reporting period or influence or control the selection of any specific investment purchased or sold by the fund. (Regulation 18237)

**Investments and Interests in Real Property:** When disclosing investments on Schedules A-1 or A-2 and interests in real property on Schedules A-2 or B, you must include investments and interests in real property held by your spouse or registered domestic partner, and those held by your dependent children, as if you held them directly.

Examples:

- Julia Pearson, husband, and two dependent children each own \$600 in stock in General Motors. Because the total value of their holdings is \$2,400, Julia must disclose the stock as an investment on Schedule A-1.
- Pat and Mark Johnson, a married couple, jointly own Classic Autos. Mark must disclose Classic Autos as an investment on Schedule A-2. To determine the reportable value of the investment, Mark will aggregate the value of his 50% interest and Pat’s 50% interest. Thus, if the total value of the business entity is \$150,000, he will check the box \$100,001 - \$1,000,000 in Part 1 of Schedule A-2. (Also see Reference Pamphlet, page 11, for an example of how to calculate reportable income.)

The Johnsons also own the property where Classic Autos is located. To determine the reportable value of the real property, Mark will again aggregate the value of his 50% interest and Pat’s 50% interest to determine the amount to report in Part 4 of Schedule A-2.

- Katie Lee rents out a room in her home. She receives \$6,000 a year in rental income. Katie will report the fair market value of the rental portion of her residence and the income received on Schedule B.

**Jurisdiction:** Report disclosable investments and sources of income (including loans, gifts, and travel payments) that are either located in or doing business in your agency’s jurisdiction, are planning to do business in your agency’s jurisdiction, or have done business during the previous two years in your agency’s jurisdiction, and interests in real property located in your agency’s jurisdiction.

A business entity is doing business in your agency’s jurisdiction if the entity has business contacts on a regular or substantial basis with a person who maintains a physical presence in your jurisdiction.

Business contacts include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods. Business contacts do not include marketing via the Internet, telephone, television, radio, or printed media.

The same criteria are used to determine whether an individual, organization, or other entity is doing business in your jurisdiction.

Exception:

Gifts are reportable regardless of the location of the donor. For example, a state agency official with full disclosure must report gifts from sources located outside of California. (Designated employees/code filers should consult their disclosure categories to determine if the donor of a gift is of the type that must be disclosed.)

When reporting interests in real property, if your jurisdiction is the state, you must disclose real property located within the state of California unless your agency’s conflict of interest code specifies otherwise.

For local agencies, an interest in real property is located in your jurisdiction if any part of the property is located in, or within two miles of, the region, city, county, district, or other geographical area in which the agency has jurisdiction, or if the property is located within two miles of any land owned or used by the agency.

## Terms & Definitions - (continued)

See the following explanations to determine what your jurisdiction is:

**State Offices and All Courts:** Your jurisdiction is the state if you are an elected state officer, a state legislator, or a candidate for one of these offices. Judges, judicial candidates, and court commissioners also have statewide jurisdiction. (*In re Baty* (1979) 5 FPPC Ops. 10) If you are an official or employee of, or a consultant to, a state board, commission, or agency, or of any court or the State Legislature, your jurisdiction is the state.

**County Offices:** Your jurisdiction is the county if you are an elected county officer, a candidate for county office, or if you are an official or employee of, or a consultant to, a county agency or any agency with jurisdiction solely within a single county.

**City Offices:** Your jurisdiction is the city if you are an elected city officer, a candidate for city office, or you are an official or employee of, or a consultant to, a city agency or any agency with jurisdiction solely within a single city.

**Multi-County Offices:** If you are an elected officer, candidate, official or employee of, or a consultant to a multi-county agency, your jurisdiction is the region, district, or other geographical area in which the agency has jurisdiction. (Example: A water district has jurisdiction in a portion of two counties. Members of the board are only required to report interests located or doing business in that portion of each county in which the agency has jurisdiction.)

**Other (for example, school districts, special districts and JPAs):** If you are an elected officer, candidate, official or employee of, or a consultant to an agency not covered above, your jurisdiction is the region, district, or other geographical area in which the agency has jurisdiction. See the multi-county example above.

**Leasehold Interest:** The term "interest in real property" includes leasehold interests. An interest in a lease on real property is reportable if the value of the leasehold interest is \$2,000 or more. The value of the interest is the total amount of rent owed by you during the reporting period or, for a candidate or assuming office statement, during the prior 12 months.

You are not required to disclose a leasehold interest with a value of less than \$2,000 or a month-to-month tenancy.

**Loan Reporting:** Filers are not required to report loans from commercial lending institutions or any indebtedness created as part of retail installment or credit card transactions that are made in the lender's regular course of business, without regard to official status, on terms available to members of the public.

**Loan Restrictions:** State and local elected and appointed public officials are prohibited from receiving any personal loan totaling more than \$250 from an official, employee, or consultant of their government agencies or any government agency over which the official or the official's agency has direction or control. In addition, loans of more than \$250 from any person who has a contract with the official's agency or an agency under the official's control are prohibited unless the loan is from a commercial lending institution or part of a retail installment or credit card transaction made in the regular course of business on terms available to members of the public.

State and local elected officials are also prohibited from receiving any personal loan of \$500 or more unless the loan agreement is in writing and clearly states the terms of the loan, including the parties to the loan agreement, the date, amount, and term of the loan, the date or dates when payments are due, the amount of the payments, and the interest rate on the loan.

Campaign loans and loans from family members are not subject to the \$250 and \$500 loan prohibitions.

A personal loan made to a public official that is not being repaid or is being repaid below certain amounts will become a gift to the official under certain circumstances. Contact the FPPC for further information, or see the FPPC fact sheet entitled "Limitations and Restrictions on Gifts, Honoraria, Travel, and Loans," which can be obtained from your filing officer or the FPPC website ([www.fppc.ca.gov](http://www.fppc.ca.gov)).

**Original Statement:** A statement containing either a handwritten "wet" signature or a "secure electronic signature" signed under the penalty of perjury and verified by the filer pursuant to Gov. Code Section 81004. A "secure electronic signature" means either (1) a signature submitted using an approved electronic filing system or (2) if permitted by the filing officer, a digital signature submitted via the filer's agency email address. (See Regulations 18104 and 18757.)

**Privileged Information:** FPPC Regulation 18740 sets out specific procedures that must be followed in order to withhold the name of a source of income. Under this regulation, you are not required to disclose on Schedule A-2, Part 3, the name of a person who paid fees or made payments to a business entity if disclosure of the name would violate a legally recognized privilege under California or Federal law. However, you must provide an explanation for nondisclosure, separately stating for each undisclosed person: the legal basis for the assertion of the privilege, facts demonstrating why the privilege is applicable, and that to the best of your knowledge you have not and will not make, participate in making, or use your official position to influence a governmental decision affecting the undisclosed person in violation of Government Code Section 87100.

## Terms & Definitions - (continued)

This explanation may be included with, or attached to, the public official's Form 700.

We note that the name of a source of income is privileged only to a limited extent under California law. For example, a name is protected by attorney-client privilege only when facts concerning an attorney's representation of an anonymous client are not publicly known and those facts, when coupled with disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability. A patient's name is protected by physician-patient privilege only when disclosure of the patient's name would also reveal the nature of the treatment received by the patient. A patient's name is also protected if the disclosure of the patient's name would constitute a violation by an entity covered under the Federal Health Insurance Portability and Accountability Act (also known as HIPAA).

### **Public Officials Who Manage Public Investments:**

Individuals who invest public funds in revenue-producing programs must file Form 700. This includes individuals who direct or approve investment transactions, formulate or approve investment policies, and establish guidelines for asset allocations. FPPC Regulation 18700.3 defines "public officials who manage public investments" to include the following:

- Members of boards and commissions, including pension and retirement boards or commissions, and committees thereof, who exercise responsibility for the management of public investments;
- High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments (for example, chief or principal investment officers or chief financial managers); and
- Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions described above.

**Registered Domestic Partners:** Filers must report investments and interests in real property held by, and sources of income to, registered domestic partners. (See Regulation 18229.)

### **Retirement Accounts (for example, deferred compensation and individual retirement accounts (IRAs)):**

Assets held in retirement accounts must be disclosed if the assets are reportable items, such as common stock (investments) or real estate (interests in real property). For help in determining whether your investments and real property are reportable, see the instructions to Schedules A-1, A-2, and B.

If your retirement account holds reportable assets, disclose only the assets held in the account, not the account

itself. You may have to contact your account manager to determine the assets contained in your account.

**Schedule A-1:** Report any business entity in which the value of your investment interest was \$2,000 or more during the reporting period. (Use Schedule A-2 if you have a 10% or greater ownership interest in the business entity.)

**Schedule B:** Report any piece of real property in which the value of your interest was \$2,000 or more during the reporting period.

Examples:

- Anaya Tiwari deposits \$500 per month into her employer's deferred compensation program. She has chosen to purchase shares in two diversified mutual funds registered with the Securities and Exchange Commission. Because her funds are invested solely in non-reportable mutual funds (see Schedule A-1 instructions), Anaya has no disclosure requirements with regard to the deferred compensation program.
- Earl James Jones has \$6,000 in an individual retirement account with an investment firm. The account contains stock in several companies doing business in his jurisdiction. One of his stock holdings, Misac Computers, reached a value of \$2,500 during the reporting period. The value of his investment in each of the other companies was less than \$2,000. Earl must report Misac Computers as an investment on Schedule A-1 because the value of his stock in that company was \$2,000 or more.
- Adriane Fisher has \$5,000 in a retirement fund that invests in real property located in her jurisdiction. The value of her interest in each piece of real property held in the fund was less than \$2,000 during the reporting period. Although her retirement fund holds reportable assets, she has no disclosure requirement because she did not have a \$2,000 or greater interest in any single piece of real property. If, in the future, the value of her interest in a single piece of real property reaches or

## Terms & Definitions - (continued)

exceeds \$2,000, she will be required to disclose the real property on Schedule B for that reporting period.

**Trusts:** Investments and interests in real property held and income received by a trust (including a living trust) are reported on Schedule A-2 if you, your spouse or registered domestic partner, and your dependent children together had a 10% or greater interest in the trust and your pro rata share of a single investment or interest in real property was \$2,000 or more.

You have an interest in a trust if you are a trustor and:

- Can revoke or terminate the trust;
- Have retained or reserved any rights to the income or principal of the trust or retained any reversionary or remainder interest; or
- Have retained any power of appointment, including the power to change the trustee or the beneficiaries.

Or you are a beneficiary and:

- Presently receive income (see Gov. Code Section 82030); or
- Have an irrevocable future right to receive income or principal. (See FPPC Regulation 18234 for more information.)

Examples:

- Sarah Murphy has set up a living trust that holds her principal residence, stock in several companies that do business in her jurisdiction, and a rental home in her agency's jurisdiction. Since Sarah is the trustor and can revoke or terminate the trust, she must disclose any stock worth \$2,000 or more and the rental home on Schedule A-2. Sarah's residence is not reportable because it is used exclusively as her personal residence.
- Chao Yee is listed as a beneficiary in his grandparents' trust. However, Chao does not presently receive income from the trust, nor does he have an irrevocable future right to receive income or principal. Therefore, Chao is not required to disclose any assets contained in his grandparents' trust.

### Blind Trusts:

A blind trust is a trust managed by a disinterested trustee who has complete discretion to purchase and sell assets held by the trust. If you have a direct, indirect, or beneficial interest in a blind trust, you may not be required to disclose your pro rata share of the trust's assets or income.

However, the trust must meet the standards set out in

FPPC Regulation 18235, and you must disclose reportable assets originally transferred into the blind trust and income from those original assets on Schedule A-2 until they have been disposed of by the trustee.

### Trustees:

If you are only a trustee, you do not have a reportable interest in the trust. However, you may be required to report the income you received from the trust for performing trustee services.

**Wedding Gifts:** Wedding gifts must be disclosed if they were received from a reportable source during the period covered by the statement. Gifts valued at \$50 or more are reportable; however, a wedding gift is considered a gift to both spouses equally. Therefore, you would count one-half of the value of a wedding gift to determine if it is reportable and need only report individual gifts with a total value of \$100 or more.

For example, you receive a place setting of china valued at \$150 from a reportable source as a wedding gift. Because the value to you is \$50 or more, you must report the gift on Schedule D, but may state its value as \$75.

Wedding gifts are not subject to the \$520 gift limit, but they are subject to the \$10 lobbyist/lobbying firm gift limit for state officials.

### Privacy Information Notice

Information requested on all FPPC forms is used by the FPPC to administer and enforce the Political Reform Act (Gov. Code Sections 81000-91014 and California Code of Regulations Sections 18110-18997). All information required by these forms is mandated by the Political Reform Act. Failure to provide all of the information required by the Act is a violation subject to administrative, criminal, or civil prosecution. All reports and statements provided are public records open for public inspection and reproduction.

If you have any questions regarding this Privacy Notice or how to access your personal information, please contact the FPPC at:

General Counsel  
Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811  
(916) 322-5660  
(866) 275-3772

## California Fair Political Practices Commission

# Frequently Asked Questions: Form 700 Disclosure

---

|   |                                |                                 |
|---|--------------------------------|---------------------------------|
| <b>General</b> .....Page 1  | <b>Income</b> .....Page 2      | <b>Investments</b> .....Page 3  |
| <b>Real Property</b> ....Page 4   | <b>Enforcement</b> .....Page 5 | <b>Gifts/Travel</b> .....Page 5 |
| <b>Tickets to Non-Profit and Political Fundraising Events</b> .....Page 9 |                                |                                 |

---

The FAQs listed below are selected from questions often asked about the Statement of Economic Interests (Form 700). Because it is not possible to address all of the unique variables and circumstances related to disclosure, individuals are encouraged to contact the FPPC with specific facts. Most officials must also consult their agency's conflict of interest code to determine their disclosure level and their reportable interests. The Form 700 is a public document. Form 700s filed by State Legislators and Judges, members of the FPPC, County Supervisors, and City Council Members are available on the FPPC's website.

### General Questions

1. Q. Do officials have to complete all schedules of the Form 700?
  - A. Not necessarily. The majority of individuals who file the Form 700 must do so by following the rules set forth in their agency's conflict of interest code ("designated employees"). Before completing the Form 700, an official should be familiar with the disclosure category for their position. For example, since job duties differ from agency to agency and even unit to unit within the same agency, an analyst for one agency, or unit of that agency, may not have the same reporting requirements as an analyst from another agency, or even another unit of the same agency. **Designated employees should obtain a copy of their agency's conflict of interest code from the agency.**

Officials listed in Government Code Section 87200 (e.g., boards of supervisors, city council members, planning commissioners, elected state officials, etc.) must report investments, business positions, and sources of income, including receipt of gifts, loans, and travel payments, from sources located in or doing business in their agency's jurisdiction. All interests in real property within the agency's jurisdiction must also be reported. For local officials, real property located within two miles of the boundaries of the jurisdiction or any real property that the agency has an interest in is deemed to be "within the jurisdiction."
2. Q. Is it necessary to read all of the information before completing the Form 700?
  - A. Each individual must verify the Form 700's content under penalty of perjury. Therefore, every effort must be made to understand what the form requires. When necessary, you may contact the FPPC for specific guidance. You may only obtain immunity from a potential enforcement action when you receive formal written advice.
3. Q. Where are the Form 700s filed?
  - A. Most state and local officials file with their agency. In most instances, the agency is required to forward the originals for specified high-level officials to the FPPC. Only retired judges serving on assignment and legislative staff file the Form 700 *directly* with the FPPC.

California Fair Political Practices Commission  
**Frequently Asked Questions: Form 700 Disclosure**

---

4. Q. If the Form 700 is postmarked by the due date, is it considered filed on time?
  - A. Yes.
  
5. Q. If an official holds multiple positions subject to filing obligations, is a statement required for each position?
  - A. Yes. However, in some circumstances, such an official may file an expanded statement instead. The expanded statement must cover all reportable interests for all jurisdictions and list all positions for which it is filed. The rules and processes governing the filing of an expanded statement are set forth in Regulation 18723.1.
  
6. Q. Do individuals need to file a complete Form 700 when they leave office?
  - A. Yes. The same requirements apply for the assuming office, the annual, and the leaving office filings.
  
7. Q. An individual is hired into a newly created management position in her agency's Information Technology Department. How does she complete the Form 700?
  - A. Because it is a newly created position, the law requires that economic interests be reported under the broadest disclosure category in the agency's conflict of interest code unless the agency sets interim disclosure that is tailored to the limited range of duties of the position. An individual may request that the agency complete the Form 804 (Agency Report of New Positions) to tailor the disclosure category to the job duties of the new position. Generally, the Form 700 must be filed with the agency within 30 days of the date of hire.
  
8. Q. Must board members of a non-profit public benefit corporation that operates California charter schools file Form 700?
  - A. Yes. Members of charter schools are public officials and must file the Form 700.

**Income Questions**

9. Q. Must an official report a spouse's or registered domestic partner's salary?
  - A. Generally an official is required to report their community property share (50%) of their spouse's or registered domestic partner's salary. The disclosure lists the employer's name as the source of income on Schedule C of the Form 700. If the spouse or registered domestic partner is self-employed, the business entity is reported on Schedule A-2. Officials should check their disclosure category, if applicable, to determine if the income is reportable. A spouse or registered domestic partner's government salary is not reportable (e.g., spouse is a teacher at a public school).

California Fair Political Practices Commission

**Frequently Asked Questions: Form 700 Disclosure**

---

10. Q. If an official and their spouse have a legally separate property agreement (e.g., prenuptial), must the official still report their community property share (50%) in their spouse's income?
- A. No. If there is a legally separate property agreement, the official is not required to report their community property share in their spouse's income so long as the funds are not commingled with community funds or used to pay for community expenses or to produce or enhance the official's separate income. This reporting exception does not apply to investments and interests in real property. Even if a public official and their spouse have a separate property agreement, the spouse's investments and interests in real property must still be disclosed because the definitions of reportable investments and interests in real property include those held by the official's immediate family (spouse, registered domestic partner, and dependent children). These definitions are not dependent on community property law.
11. Q. If an official owns a business in which he has received income of \$10,000 or more from a client, is the official required to disclose the client's name on Schedule A-2, Part 3?
- A. Yes, except for under rare circumstances where disclosure of the identity would violate a legally recognized privilege under California or federal law. In these cases, the FPPC may authorize an exemption. (Regulation 18740)
12. Q. When an official purchases a new car and trades in the old car as credit toward the purchase price, is the trade-in allowance considered reportable income on the Form 700?
- A. No. A trade-in allowance is not considered income and is not reportable on an official's Form 700. However, income received from the sale of an auto may be reportable.
13. Q. An official owns a rental property that they are required to report. The renter/tenant pays a property management company and the company deposits the funds into the official's checking account. Would the source of rental income be listed as the property management company or the person living at the residence who is paying the property management company?
- A. The source of the rental income is the person living at the residence (renter/tenant). The property management company does not need to be disclosed.

**Investment Questions**

14. Q. An official holds various stocks through an account managed by an investment firm. The account manager decides which stocks to purchase with no input from the official. Are the stocks subject to disclosure?
- A. Yes. Unless the stocks are in a diversified mutual fund registered with the SEC or in a fund similar to a diversified mutual fund (e.g., exchange traded fund (ETF)) if the similar fund meets the specific criteria outlined in Regulation 18237. Any investments worth \$2,000 or more in a business entity located in or doing business in the jurisdiction must be disclosed on Schedule A-1 or A-2 if the official's disclosure category requires that the investments be reported.
15. Q. Are funds invested in a retirement account required to be disclosed?
- A. Investments held in a government defined-benefit pension program plan (e.g., CalPERS) are not reportable. Investments held in a fund such as a defined contribution plan 401(k) or exchange traded fund (EFT) are not required to be disclosed if the fund meets the specific criteria outlined in Regulation 18237. An official may need to contact their account manager for assistance in determining what assets are held in the account.

California Fair Political Practices Commission

**Frequently Asked Questions: Form 700 Disclosure**

---

16. Q. If an official reported stocks that were acquired last year on their annual Form 700, must the stocks be listed again on the official's next Form 700?
- A. Yes. Stocks that are worth \$2,000 or more during the reporting period must be reported every year that they are held. The "acquired" and "disposed" dates are only required if the stocks were acquired or disposed of during the period covered by the Form 700.
17. Q. How are interests in a living trust reported if the trust includes: (1) rental property in the official's jurisdiction; (2) a primary residence; and (3) investments in diversified mutual funds? Are there different disclosure rules?
- A. The name of the trust is reported, along with the rental property and its income, on Schedule A-2. The official's primary residence, if used exclusively as a personal residence, and investments in diversified mutual funds registered with the SEC, are not reportable. Although the official's primary residence is not required to be disclosed on the Form 700, it is still considered an economic interest for conflict of interest purposes. (See Question 18.) A secondary residence not used exclusively for personal purposes may be reportable. (See Question 19.)
18. Q. A Form 700 filer has a 10% or greater ownership interest in a company that provides uncompensated, pro-bono, or volunteer services within the filer's jurisdiction. Must this investment be disclosed on Schedule A-2 of the Form 700?
- A. Yes. An investment must be disclosed if there is any financial interest in a business entity that does business or plans to do business within the jurisdiction (See Government Code 82034). Although the services are uncompensated, "doing business in" is defined as having business contacts on a regular or substantial basis including providing services or goods (Regulation 18230).

**Real Property Questions**

19. Q. Is an official's personal residence reportable?
- A. Generally, any personal residence occupied by an official or their family is not reportable if used exclusively as a personal residence. However, a residence for which a business deduction is claimed is reportable if the portion claimed as a tax deduction is valued at \$2,000 or more. In addition, any residence for which an official receives rental income is reportable if it is located in the jurisdiction.
20. Q. When an official is required to report interests in real property, is a secondary residence reportable?
- A. It depends. First, the residence must be located in the official's jurisdiction. If the secondary residence is located in the official's jurisdiction and rental income is received (including from a family member), the residence is reportable. However, if the residence is used exclusively for personal purposes and no rental income is received, it is not reportable. Although the secondary residence may not be reportable, it is still considered an economic interest for conflict of interest purposes.
21. Q. If a primary or secondary personal residence is required to be reported, is the street address required to be disclosed?
- A. No. The assessor's parcel number may be listed instead of the street address.



California Fair Political Practices Commission  
**Frequently Asked Questions: Form 700 Disclosure**

---

### **Enforcement Question**

22. Q. What is the penalty for not filing the Form 700 on time or not reporting all required economic interests?
- A. A late fine of \$10 per day up to a maximum of \$100 may be assessed. In addition, if a matter is referred to the FPPC's Enforcement Division for failure to file or failure to include all required economic interests, the fine may be substantially higher. If an individual does not pay a fine, the matter may be referred to the Franchise Tax Board for collection.

### **Gift/Travel Questions**

23. Q. What is the gift limit for 2021-2022?
- A. **\$520:** This means that gifts from a single, reportable source, other than a lobbyist or lobbying firm (see below), may not exceed \$520 in a calendar year. For officials and employees who file the Form 700 under an agency's conflict of interest code ("designated employees"), this limit applies only if the official or employee would be required to report income or gifts from that source on the Form 700, as outlined in the "disclosure category" portion of the agency's conflict of interest code. For conflict of interest purposes, the gift must be under \$520 to avoid consideration under the conflict rules.

#### **State Lobbyist & Lobbying Firm Limit:**

**\$10:** State candidates, state elected officers, and state legislative officials may not accept gifts aggregating more than **\$10 in a calendar month that are made or arranged by a registered state lobbyist or lobbying firm.** The same rule applies to state agency officials, including members of state boards and commissions, if the lobbyist or firm is registered to lobby, or should be registered to lobby, the official's or employee's agency.

24. Q. During the year, an official received several gifts of meals from the same reportable source. Each meal was approximately \$35. Is the source reportable?
- A. Yes. Gifts from the same reportable source are aggregated, and the official must disclose the source when the total value of all meals reaches or exceeds \$50.
25. Q. How does an individual return a gift so that it is not reportable?
- A. Unused gifts that are returned to the donor or reimbursed within 30 days of receipt are not reportable. The recipient may also donate the unused item to a charity or a governmental agency within 30 days of receipt or acceptance so long as the donation is not claimed as a tax deduction. An individual may not, however, reimburse a charity for the value (or partial value) of a gift from another source, in order to not report the gift, unless the charity was the original source of the gift.
26. Q. Two people typically exchange gifts of similar value on birthdays. Are these items reportable?
- A. No. Gift exchanges with individuals, other than lobbyists, on birthdays, holidays, or similar occasions, are not reportable or subject to gift limits. The gifts exchanged must be similar in value.

California Fair Political Practices Commission  
**Frequently Asked Questions: Form 700 Disclosure**

---

27. Q. Must an official report gifts received from an individual whom the official is dating?
- A. No. Gifts of a personal nature exchanged because the individuals are in a bona fide dating relationship are not reportable or subject to gift limits. However, the official remains subject to the conflict of interest rules and some matters may require recusal from voting.
28. Q. If an official makes a speech related to national public policy and their spouse attends the dinner at the event, is the spouse's meal considered a gift to the official?
- A. Yes. The official's meal is not a reportable gift; however, their spouse's meal is a gift and reportable on the official's Form 700 if the value is \$50 or more.
29. Q. A vendor that does business with the agency provided entertainment tickets to the spouse of one of the agency members. Must the member report the tickets as gifts?
- A. Yes. Unless an exception applies, the tickets are a reportable gift. A gift to an official's spouse is a gift to the official when there is no established working, social, or similar relationship between the donor/vendor and the spouse or there is evidence to suggest that the donor had a purpose to influence the official.
30. Q. An agency received two free tickets to a concert from a local vendor. The agency has a policy governing the reporting of tickets and passes distributed to persons for use in ceremonial roles or other agency related activities. The agency had discretion to determine who in the agency received the tickets. Each ticket was valued at \$140. If the agency director used the tickets, how are they reported?
- A. Assuming the tickets meet the agency's policy as an appropriate use of public funds, the agency may report the tickets (worth \$280) on the Form 802 (Agency Report of Ceremonial Role Events and Ticket/Pass Distributions), which is a public record. The director does not need to report the tickets on the Form 700.
31. Q. An agency received a large box of chocolates as a holiday gift from a local merchant. It was addressed to the agency and not to a particular employee. Is there a reporting requirement?
- A. No. There is no reporting requirement if the value received by each agency employee is less than \$50.
32. Q. An agency official receives a gift basket specifically addressed to the official worth more than \$50 from a local merchant. Is there a reporting requirement?
- A. If the source of the gift basket is reportable by the official, the official must report the gift, even if they share the gift with other agency employees.
33. Q. Do prizes donated to a governmental agency by an outside source constitute gifts under the Act if they were received by city employees in a drawing conducted by the city for all city employees participating in the city's charitable food drive?
- A. Yes. The prizes are gifts if donated by an outside source and subject to the Act's limits and reporting requirements.

California Fair Political Practices Commission

**Frequently Asked Questions: Form 700 Disclosure**

---

34. Q. An official won a scholarship in a raffle at a software update training class. The scholarship covered the cost of the class. All attendees, including other public officials and members of the public, were eligible to apply for the scholarship. Is the official required to report the scholarship as a gift?
- A. A scholarship received in a “bona fide” competition may be reported as income instead of a gift. Whether or not a competition or contest is “bona fide” depends on specific facts, such as the nature of the pool of contestants. Contact the FPPC for assistance.
35. Q. Is a ticket provided to an official for their admission to an event at which the official performs a ceremonial role or function on behalf of their agency reportable on the official’s Form 700?
- A. No, so long as the organization holding the event provides the ticket and so long as the official’s agency completes the Form 802 (Agency Report of Ceremonial Role Events and Ticket/Pass Distributions). The form will identify the official’s name and explain the ceremonial function. (See Regulation 18942.3 for the definition of “ceremonial role.”)
36. Q. An official makes an annual donation to an educational organization that has a 501(c)(3) tax-exempt status. The organization is holding a two-hour donor appreciation event, which will include wine, appetizers, and music. Free access to the event is being provided to all donors to the organization. Must the official report the event as a gift from the organization?
- A. Because free access to the event is offered to all of the organization’s donors, without regard to official status, access to the event is not a reportable gift.
37. Q. Are frequent flyer miles reportable?
- A. No. Discounts received under an airline’s frequent flyer program that are available to all members of the public are not required to be disclosed.

**IMPORTANT NOTE: See Regulation 18950.1 for additional information on reporting travel payments. In some circumstances the agency may report the travel in lieu of the official reporting the travel.**

38. Q. If a non-profit organization pays for an official to travel to a conference after receiving the funds to pay for the travel from corporate sponsors, specifically for the purpose of paying for the official’s travel, is the non-profit organization or the corporate sponsors the source of the gift?
- A. The corporate sponsors are the source of the gift if the corporate sponsors donated funds specifically for the purpose of the official’s travel. Thus, the benefit of the gift received by the official would be pro-rated among the donors. Each reportable donor would be subject to the gift limit and identified on the official’s Form 700. The FPPC should be contacted for specific guidance to determine the true source of the travel payment.

California Fair Political Practices Commission  
**Frequently Asked Questions: Form 700 Disclosure**

---

39. Q. May an official accept travel, lodging and subsistence from a foreign sister city while representing the official's home city?
- A. Yes. If the travel and related lodging and subsistence is paid by a foreign government and is reasonably related to a legislative or governmental purpose, it is not subject to the gift limit. However, the payments must be disclosed as gifts on the Form 700 for this exception to apply. While in the foreign country, any personal excursions not paid for by the official must also be disclosed and are subject to the gift limit. If private entities make payments to the foreign government to cover the travel expenses, the gift limit will apply and travel payments will likely be prohibited. Please contact the FPPC for more information.
40. Q. An analyst for a state or local agency attends a training seminar on the new federal standards related to the agency's regulatory authority. If the analyst's travel payments are paid by the federal agency, must the analyst report the payment on the Form 700?
- A. No. A payment for travel and related per diem received from a government agency for education, training, or other inter-agency programs or purposes, is not considered a gift or income to the official who uses the payment.
41. Q. A state legislator and a planning commissioner were guest speakers at an association's event. Travel expenses were paid by the association, and the event was held in the United States. Is this reportable?
- A. Yes. The payment is reportable, but not subject to the gift limits. In general, an exception applies to payments for travel within the United States that are provided to attend a function where the official makes a speech. These payments are not limited, but are reportable as gifts. The rules require that the speech be reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and the travel payment must be limited to actual transportation and related lodging and subsistence the day immediately preceding, the day of, and the day immediately following the speech. (See Government Code Section 89506. Other rules may be applicable if this exception is not used.)
42. Q. An official serves as a board member for two organizations – one has a 501(c)(3) tax-exempt status and the other has a 501(c)(6) tax-exempt status. The organizations pay the official's travel expenses to attend board meetings. Must the official report these travel payments?
- A. Under the Act, travel payments provided to an official by a 501(c)(3) organization are exempt from the definition of "income" and therefore, not reportable. However, travel payments from other organizations, including a 501(c)(6) organization, are likely required to be reported. Designated employees must report such travel payment if the organization is reportable pursuant to the official's disclosure category in their agency's conflict of interest code.
43. Q. The local airport authority issues a certain number of airport parking cards to the County to allow the cardholders to use the parking facilities at the airport at no charge, provided the cardholder is on official business. Must the officials who use the parking cards report a gift on the Form 700?
- A. No. As long as the parking cards are used for official business only, the parking cards do not provide a personal benefit, so no gift is received. If a parking card is used for *personal* purposes, a gift must be reported.

California Fair Political Practices Commission  
**Frequently Asked Questions: Form 700 Disclosure**

---

**Tickets to Non-Profit and Political Fundraisers Questions**

44. Q. An official is offered a ticket from a 501(c)(3) organization to attend its fundraising event. The face value (price) of the ticket is \$500, and the ticket states that the tax deductible portion is \$350. If the official accepts the ticket, what must be reported?
- A. Nothing is required to be reported on the Form 700, so long as the ticket is provided directly by the 501(c)(3) organization for its own fundraising event and is used for the official's own attendance at the fundraiser. In this case, the ticket is deemed to have no value. The official may also accept a second ticket provided directly by the 501(c)(3) organization for their guest attending the event, without a reporting obligation by either the official or the guest.
45. Q. What if someone purchases a table at a non-profit fundraiser and offers an official a seat at the table?
- A. If another person or entity provides a ticket, it is a gift and subject to the gift limit. The value is the non-deductible portion on the ticket. If there is no declared face value, then the value is the pro-rata share of the food, catering service, entertainment, and any additional item provided as part of the event. The "no value" exception only applies if the official receives no more than two tickets for their own use directly from the 501(c)(3) organization and it is for the organization's fundraising event.
46. Q. A 501(c)(3) organization provides a ticket to an official for its fundraising event. The organization seats the official at a table purchased by a business entity. Does the official have to report the ticket?
- A. No. So long as the ticket is provided directly by the 501(c)(3) organization and is used for the official's own attendance at the fundraiser, the ticket is not reportable regardless of where the official is seated.
47. Q. An agency employee who holds a position designated in its agency's conflict of interest code receives a ticket to a fundraiser from a person not "of the type" listed in the agency's code. Is the agency employee required to report the value?
- A. No. A ticket or any other gift may be accepted under these circumstances without limit or reporting obligations. Agencies must ensure the conflict of interest code adequately addresses potential conflicts of interests but not be so overbroad as to include sources that are not related to the employee's official duties.
48. Q. An official receives a ticket to attend a political fundraiser held in Washington D.C. from a federal committee. Is the official required to disclose the ticket as a gift, and is it subject to the gift limit?
- A. No. The value of the ticket is not a gift, so long as the ticket is provided to the official directly by the committee holding the fundraiser and the official personally uses the ticket. (Regulation 18946.4.) Separate rules apply for travel provided to attend the fundraiser. Regulation 18950.3 covers issues on travel paid by or for a campaign committee.

California Fair Political Practices Commission

**Frequently Asked Questions: Form 700 Disclosure**

---

49. Q. A political party committee is holding a political fundraiser at a golf course and a round of golf is included. If the committee provides an elected official a ticket, is the ticket reportable by the official?
- A. No, so long as the official uses the ticket for their own use. If someone other than the political party provides a ticket, the full cost of the ticket is a gift. The political party must report the total amount spent on the fundraiser on its campaign statement.
50. Q. If a business entity offers an official a ticket or a seat at a table that was purchased for a political fundraiser, what is the value?
- A. Because the ticket was not offered by the campaign committee holding the fundraiser, it is a gift to the official. The value is either the face value of the ticket or the pro-rata share of the food, catering services, entertainment, and any additional benefits provided to attendees.
51. Q. If an official attends an event that serves only appetizers and drinks, does the “drop-in” exception apply no matter how long the official stays or how many appetizers or drinks are consumed?
- A. No. The focus of the “drop-in” exception is on the official’s brief attendance and limited consumption, not on the nature of the event as a whole. If an official attends an event that serves only appetizers and drinks, the “drop-in” exception applies only if the official just “drops in” for a few minutes and consumes only a “de minimis” amount of appetizers and drinks. The “drop-in” exception does not automatically apply just because the event does not serve more than appetizers and drinks.
52. Q. An organization, which is not a 501(c)(3) organization, is holding a fundraiser at a professional sporting event. Tickets to this sporting event are sold out and it appears that tickets are only available at a substantially higher price than the face value amount of the ticket provided to the official by the organization. If the official attends the event, what is the value of the gift?
- A. The value is the face value amount on the ticket to the sporting event. This valuation rule applies to all tickets to such events that are not covered by a separate valuation exception, such as non-profit and political party fundraisers.
53. Q. An official receives a ticket to a fundraiser, and if accepted, the ticket will result in a reportable gift or a gift over the current gift limit. What are the options?
- A. The official may reimburse the entity or organization that provided the ticket for the amount over the gift limit. Alternatively, the official may pay down the value of the ticket to under the \$50 gift reporting threshold if the official does not want to disclose the ticket. Reimbursement and/or pay down must occur within 30 days of receipt of the ticket. A candidate or elected official may use campaign funds to make the reimbursement if the official’s attendance at the event is directly related to a political, legislative, or governmental purpose. A ticket that is not used and not given to another person is not considered a gift to the official and therefore is not reportable.

California Fair Political Practices Commission

## **Update of Rules Regarding the Filing of Expanded Statements of Economic Interests by Public Officials with Multiple Positions**

---

In November 2020, the Commission updated its regulations governing the filing of an Expanded Statement of Economic Interests (an “Expanded Statement”) by a public official who holds multiple positions. The goal of this fact sheet is to help filing officers, filing officials, and officials with multiple positions to understand the updated rules governing the filing of an Expanded Statement.<sup>1</sup>

### **Background**

In order to reduce redundant filing obligations, which did not provide additional disclosure, and to improve Commission and agency staff efficiency, the Commission has updated the rules governing filing of Expanded Statements.

The Political Reform Act<sup>2</sup> governs the filing of Statements of Economic Interests (“SEIs”) by public officials, including officials specified in Section 87200 (Sections 87202 – 87204), designated employees (Section 87302), candidates for any elective office designated in a conflict of interest code (Section 87302.3), and members of boards or commissions of newly created agencies (Section 87302.6).

Prior to the update, certain officials with multiple positions were authorized to file an Expanded Statement covering all reportable interests, but minor modification and additional guidance on filing rules and processes for Expanded Statements was necessary.

### **New Regulation 18723.1**

New Regulation 18723.1(a) defines “Expanded Statement of Economic Interests,” “primary position,” and “additional position” for purposes of the regulation. Subdivision (c) authorizes, but does not require, an official with multiple positions subject to filing obligations to file an Expanded Statement for each position, rather than a separate and distinct SEI for each position. That provision also specifies processes for filing such a statement: the original Expanded Statement is filed for the official’s primary position and

---

<sup>1</sup> This fact sheet is informational only and contains only highlights of selected provisions of the law. It does not carry the weight of the law. For further information, consult the Political Reform Act and its corresponding regulations, advice letters, and opinions.

<sup>2</sup> The Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

a copy of that Expanded Statement is filed for each additional position. Subdivision (a) provides criteria for determining which position is the official's primary position.

Subdivision (a) also requires an official who files an Expanded Statement to list all positions for which the Expanded Statement is submitted. Subdivision (b), however, provides that a statewide elected officer is not required to list additional positions and is not required to file a copy of the Expanded Statement for additional positions as they already provide full disclosure throughout the State.

In regard to assuming office or leaving office Expanded Statements, subdivision (c)(4) only authorizes an official with multiple positions to file such an Expanded Statement if the official assumes or leaves each position on the same day.

Subdivision (e) requires the Expanded Statement to be submitted in paper format if the Commission's electronic filing system or the agency's approved electronic filing system is incapable of processing the Expanded Statement.

In order to improve filing official and Commission staff efficiency, subdivision (f) expressly provides that if an official files a copy of an Expanded Statement for an additional position, that copy is not required to be forwarded to the Commission.





## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT:** BOARD COMMUNICATIONS POLICY FACT SHEET

---

### Written Report

#### Background/Discussion

The OCERS Monitoring and Reporting Policy requires that a copy of the Board of Retirement Communications Policy Fact Sheet be provided to the members of the Board annually. The Fact Sheet summarizes the contents of the OCERS Communications Policy and is intended to provide Board members with a quick reference guide.

The objectives of the OCERS Communication Policy are to encourage and facilitate open, accurate, timely and effective communications among all relevant parties, and to mitigate the risks to OCERS, the Board and the Board members that may arise in connection with communications. The policy was last revised in April 2020.

A copy of the OCERS Communication Policy and the Communications Policy Fact Sheet are attached.

#### Attachments

- (1) Communications Policy
- (2) Communications Policy Fact Sheet

#### Submitted by:



---

Gina M. Ratto  
General Counsel



## OCERS Board Policy Communications Policy

---

### Background

1. The OCERS Board of Retirement (Board) recognizes that effective communication is integral to good governance. In order to achieve the mission and objectives of OCERS, the Board wishes to establish protocols and mechanisms for communications among Board members; and between Board members and OCERS management, employers, members, and external parties. The Board has adopted this Policy to provide the Board as a whole, individual Board members, and OCERS team members with guidelines for executing the communications function of the Board.

### Policy Objectives

2. To encourage and facilitate open, accurate, timely, and effective communications with all relevant parties.
3. To mitigate risks to OCERS, the Board, and Board members that may arise in connection with communications.

### Principles and Assumptions

4. Inappropriate or erroneous communications from Board members may represent a significant risk to OCERS, the Board, and individual Board members.
5. A Board member communications policy must balance the need to mitigate that risk with the need for open and efficient communication.

### Policy Guidelines

#### *General Guidelines*

6. Members of the Board and the OCERS team represent many differing backgrounds and viewpoints. Therefore, Board members and staff will not send partisan political communications to members of the Board, OCERS team members, contractors, temporary employees, or others working for or providing services to OCERS.
7. Members of the Board and OCERS team members will not use OCERS equipment for disseminating partisan political communications to anyone, except where specifically authorized for fulfillment of duties of a duly appointed labor representative.
8. Members of the Board and OCERS team members will not engage in communications that may be considered offensive, profane, vulgar, or based on any characteristics of a protected class under Federal law or laws in the State of California, regardless of the motivation for such communications.
9. Electronic mail allows for near instantaneous communications between individuals and / or groups of people. Electronic communications also present challenges in managing communications, potential violations of the *Ralph M. Brown Act* (Gov. Code §§ 54950-54962) (the "Brown Act") and challenges in complying with the Public Records Act (Gov. Code §§6250, et.seq.). As such, the Board has adopted the following guidelines for use and management of electronic mail by Board members:



## OCERS Board Policy

# Communications Policy

---

- a. Electronic mail pertaining to OCERS business constitutes a business record of OCERS subject to the OCERS Records Retention and Guidelines Policy and the Public Records Act.
- b. Electronic mail between Board members must not violate any provision of the Brown Act.
- c. Communications that a Board member wishes to disseminate to a majority of the members of the Board or a majority of the members of a standing committee of the Board shall be submitted to the CEO or his or her designee only. The CEO or his or her designee will then, in his or her discretion, forward said communications to the full Board via a special email. Regardless of whether or not provided via a special email, unless the content of the message is inconsistent with OCERS' policies or applicable law (e.g., violates paragraph 8 above of this policy), it will be distributed publicly to the entire Board as a communications item posted with the public agenda for the next regular Board meeting. This paragraph in no way authorizes serial communications or communications by or between a majority of the members of the Board or a standing committee of the Board that would violate the Brown Act.
- d. In the event that an electronic mail communication is sent by a member of the OCERS team to a Board member's personal email account, the OCERS team member shall retain a copy of the email communication according to the Records Retention and Guidelines Policy and for purposes of compliance with the Public Records Act.
- e. Electronic mail communications regarding OCERS business are public records disclosable under the Public Records Act (unless otherwise covered by an exemption) regardless of the fact that they were sent, received or stored in a personal email account. Whenever possible, electronic mail communications regarding OCERS business should be sent to and from an OCERS email address. In the event an electronic mail communication pertaining to OCERS business is sent from a personal email account to a member of the OCERS team, other Board members or to any other party, the Board member shall copy the electronic mail message to an OCERS email address so that OCERS can maintain a record of the electronic mail communication and produce it in response to a request for it under the Public Records Act. This paragraph in no way authorizes serial communications or communications by or between a majority of the members of the Board or a standing committee of the Board that would violate the Brown Act.

### *Communications Among Board Members*

10. The Board shall carry out its activities in accordance with the spirit of open governance, including the provisions of the Brown Act, which include, but are not limited to:
  - a. Ensuring that communications by and between Board members comply with the Brown Act (section 54952.2 of the Brown Act);
  - b. Properly noticing and posting an agenda for Board and Committee meetings (section 54954.2 of the Brown Act);
  - c. Allowing proper public comment on agenda items before or during consideration by the Board (section 54954.3 of the Brown Act);
  - d. Properly describing all items to be considered in closed session in the notice or agenda for the meeting (section 54954.5 of the Brown Act);



## **OCERS Board Policy**

# **Communications Policy**

---

- e. Not conducting or participating in a series of communications one at a time or in a group that in total constitutes a quorum of the Board or Committee either directly or through intermediaries or electronic devices, for the purpose of developing a concurrence as to action to be taken (a serial or secret meeting prohibited by section 54952.3 of the Brown Act);
  - f. Not taking any action, whether preliminary or final, by secret ballot (section 54953(c) of the Brown Act); and
  - g. Ensuring Board and committee meeting agenda materials are properly made available to members of the public, upon request and without delay (section 54957.5 of the Brown Act).
- 11. Internal or external counsel for OCERS shall provide biennial Brown Act training/education to members of the Board.
  - 12. A member of the Board shall disclose information in his or her possession pertinent to the affairs of OCERS to the entire Board in a timely manner.
  - 13. During meetings of the Board and its committees, Board members shall communicate in a straightforward, constructive manner with due respect and professionalism.

### ***Board Member Communications with OCERS Members and Employers***

- 14. Members of the Board shall mitigate the risk of miscommunication with employers, OCERS active and deferred members, and retirees, and potential liability through adverse reliance by third parties by avoiding giving explicit advice, counsel, or education with respect to the technicalities of the plan provisions, policies, or processes.
- 15. Where explicit advice, counsel, or education with respect to the technicalities of the plan provisions, policies, or process is needed, Board members will refer inquiries to the CEO or appropriate designee. The CEO or such designee will inform the Board member when and how the matter was resolved.
- 16. Board members shall not disclose confidential communications received orally or in writing in closed session meetings of the Board or a committee of the Board or received orally or in writing from internal or external legal counsel unless the communication is specifically identified by legal counsel as not confidential.

### ***Board Member Communications with OCERS Management***

- 17. a. Board members who seek information solely in order to respond to inquiries from members about OCERS' policies and practices may direct their inquiries to the CEO or, with notice to the CEO, to the appropriate Assistant CEO or department head, who shall in turn direct subordinate staff as appropriate.
- b. All other Board member requests for information shall be directed to the CEO, who shall in turn direct staff as appropriate.
- c. All Board member expressions of concern and ideas about OCERS' policies, administration, contracting, investments, benefits, media relations and public policy issues shall be directed



## OCERS Board Policy Communications Policy

---

solely to the CEO. Under no circumstances shall Board members directly communicate about any such matters with any staff subordinate to the CEO outside of a duly noticed Board or committee meeting, without the CEO's prior express permission. If exigent circumstances arise during the CEO's absence, such matters may be directed to the CEO's designee, who shall act in lieu of the CEO.

18. a. The CEO may decline to accept Board member requests for information that require the expenditure of significant staff time or external resources, provided that the CEO then places the matter on the next subsequent Board or committee agenda, as appropriate, for consideration and direction by the full Board or committee.
- b. The Board and individual Board members shall not retaliate against either the CEO or any of OCERS' staff for acting consistently with this Policy. Board member conduct inconsistent with this Policy may subject the Board member to public censure or reprimand, loss of committee membership or other privileges of office, and/or other appropriate action by the Board.
19. The CEO shall ensure that all information requested by one or more Board members is made available to the entire Board.
20. Board members shall share any information in their possession pertinent to the affairs of OCERS with the CEO in a timely manner. Similarly, the CEO shall ensure that all relevant and pertinent information is disclosed to all of the Board members in a timely manner.

### *Board Member Communications with External Parties*

21. In general, in communicating with external parties, the following guidelines will apply:
  - a. The purpose of any communications by members of the Board shall be consistent with their sole and exclusive fiduciary duty to represent the interests of all OCERS members;
  - b. Board members and OCERS management are expected to respect the decisions and policies of the Board in external communications even if they may have opposed them or disagreed with them during Board deliberations;
  - c. Board members shall not disclose confidential communications received orally or in writing in closed session meetings of the Board or a committee of the Board or received orally or in writing from internal or external legal counsel unless the communication is specifically identified by legal counsel as not confidential;
  - d. Individual Board members shall not speak for the Board as a whole unless authorized by the Board to do so; and
  - e. In external communications, Board members are expected to disclose when they are not representing an approved position of the Board or are not speaking in their capacity as a member of the Board.
22. Subject to section 21 above, in situations that call for a spokesperson for the Board, the Chair or his or her designee shall act as spokesperson for the Board. Generally, the spokesperson should request that reporters put questions in writing.



## OCERS Board Policy Communications Policy

---

23. When interviewed, or otherwise approached by the media for information concerning the affairs of OCERS, members of the Board shall refrain from making any unilateral commitments on behalf of the Board or OCERS.
24. To help ensure the accuracy of any oral and/or written material created for the purpose of publication or presentation by members of the Board, in their capacity as such, and to ensure that neither OCERS, the Board, or such member of the Board is placed at risk thereby, all such material shall be peer reviewed by the CEO or legal counsel prior to being submitted for publication or presentation.

### Policy Review

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

### Policy History

26. This policy was adopted by the Board of Retirement on November 18, 2002.
27. The policy was revised on April 16, 2007, March 24, 2008, May 17, 2011, March 17, 2014, January 20, 2015, March 16, 2015, May 15, 2017 and April 20, 2020.

### 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

04/20/2020

Date

## **COMMUNICATIONS POLICY FACT SHEET**

### **COMMUNICATIONS AMONG BOARD MEMBERS**

- ◆ Carry out all activities in the spirit of open governance and in compliance with the Brown Act.
- ◆ Disclose pertinent information to the entire Board and CEO in a timely manner.
- ◆ Communicate in a straightforward, constructive and professional manner.

### **COMMUNICATIONS WITH OCERS MANAGEMENT**

- ◆ Direct concerns or questions about OCERS to the CEO or senior management staff.
- ◆ Direct requests for information to the CEO and limit those requiring expenditure of staff time or resources to those consistent with the Board's roles and responsibilities.
- ◆ All information requested by Board members shall be made available to the entire Board.

### **COMMUNICATIONS WITH EXTERNAL PARTIES**

- ◆ Communications shall be consistent with the fiduciary duty to represent the interests of plan members.
- ◆ Board decisions shall be respected despite personal agreement or disagreement.
- ◆ Board members shall not disclose confidential communications.
- ◆ Board members shall not speak for the entire Board unless authorized to do so.
- ◆ Board members shall disclose when not representing an approved Board position or when not speaking in their Board capacity.
- ◆ The Chair and CEO shall jointly designate a spokesperson on an issue by issue basis.
- ◆ No Board member shall make unilateral commitments to the press to provide information on behalf of the Board or OCERS.
- ◆ Written material created for publication or presentation by a Board member, in his or her capacity as such, shall be peer reviewed by the CEO or internal legal counsel prior to submission or presentation.



## Memorandum

---

**DATE:** January 6, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Tracy Bowman, Director of Finance  
**SUBJECT:** **FOURTH QUARTER 2021 TRAVEL AND TRAINING EXPENSE REPORT**

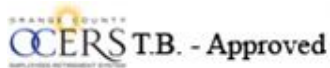
---

### Written Report

#### Background/Discussion

In accordance with OCERS' Travel Policy, the Chief Executive Officer is required to submit a quarterly report to the Board of Retirement on conference attendance and related expenditures incurred by OCERS' Board Members and staff. Attached is the Fourth Quarter 2021 Travel and Training Expense Report that includes all expenses submitted through December 31, 2021.

#### Submitted by:



Tracy Bowman  
Director of Finance



01-18-2022 REGULAR BOARD MEETING - R-10 Fourth Quarter 2021 Travel and Training Expense Report

TRAVEL AND TRAINING EXPENSE REPORT  
FOURTH QUARTER 2021  
Submitted Through December 31, 2021\*\*

| Name                   | Trip OR Class Dates | Trip Name                                      | Destination      | Trip Type  | Mileage       | Reg. Fee        | Meals         | Airfare         | Hotel           | Trans.        | Misc. | 2021 YTD Total   | 2020 Total*      |
|------------------------|---------------------|--|------------------|------------|---------------|-----------------|---------------|-----------------|-----------------|---------------|-------|------------------|------------------|
| ELEY                   | 11/9-11/12/21       | SACRS Fall 2021 Conference                     | Los Angeles, CA  | Conference | -             | 120.00          | -             | -               | 902.79          | 161.70        | -     | 1,184.49         | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>120.00</b>   | -             | -               | <b>902.79</b>   | <b>161.70</b> | -     | <b>1,184.49</b>  | -                |
| FREIDENRICH            | 5/11-5/14/21        | SACRS Spring 2021 Conference                   | Online           | Conference | -             | 120.00          | -             | -               | -               | -             | -     | 120.00           | -                |
|                        | 10/25-10/27/21      | 18th Annual Global ARC Boston                  | Boston, MA       | Conference | -             | 375.00          | 64.89         | 405.80          | 1,275.18        | 45.91         | -     | 2,166.78         | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>495.00</b>   | <b>64.89</b>  | <b>405.80</b>   | <b>1,275.18</b> | <b>45.91</b>  | -     | <b>2,286.78</b>  | <b>170.00</b>    |
| HIDALGO                |                     |  |                  |            | -             | -               | -             | -               | -               | -             | -     | 0.00             | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | -               | -             | -               | -               | -             | -     | <b>0.00</b>      | <b>50.00</b>     |
| HILTON                 | 5/11-5/14/21        | SACRS Spring 2021 Conference                   | Online           | Conference | -             | 120.00          | -             | -               | -               | -             | -     | 120.00           | -                |
|                        | 6/28/21-7/1/21      | OC Legislative Delegation                      | Washington, D.C. | Meeting    | -             | -               | -             | 697.96          | 436.74          | -             | -     | 1,134.70         | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>120.00</b>   | -             | <b>697.96</b>   | <b>436.74</b>   | -             | -     | <b>1,254.70</b>  | <b>6,637.89</b>  |
| OATES                  | 9/26-9/28/21        | NCPERS 2021 Public Pension Funding Forum       | Scottsdale, AZ   | Training   | 418.88        | 695.00          | -             | -               | 1,068.72        | -             | -     | 2,172.60         | -                |
|                        | 9/28-9/30/21        | CALAPRS Principles for Trustees 2021           | Online           | Training   | -             | 500.00          | -             | -               | -               | -             | -     | 500.00           | -                |
|                        | 11/9-11/12/21       | SACRS Fall 2021 Conference                     | Los Angeles, CA  | Conference | 40.32         | 120.00          | -             | -               | 902.79          | 161.70        | -     | 1,224.81         | -                |
| <b>Sub Total</b>       |                     |  |                  |            | <b>459.20</b> | <b>1,315.00</b> | -             | -               | <b>1,961.51</b> | <b>161.70</b> | -     | <b>3,897.41</b>  | -                |
| PACKARD                | 2/2-2/3/21          | NCPERS Fall Conference                         | Online           | Conference | -             | 300.00          | -             | -               | -               | -             | -     | 300.00           | -                |
|                        | 3/8-3/9/21          | CALAPRS General Assembly 2021                  | Online           | Conference | -             | 250.00          | -             | -               | -               | -             | -     | 250.00           | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>550.00</b>   | -             | -               | -               | -             | -     | <b>550.00</b>    | -                |
| PREVATT                | 2/22-2/24/21        | NASRA Winter System Round Table                | Online           | Conference | -             | 350.00          | -             | -               | -               | -             | -     | 350.00           | -                |
|                        | 5/11-5/14/21        | SACRS Spring 2021 Conference                   | Online           | Conference | -             | 120.00          | -             | -               | -               | -             | -     | 120.00           | -                |
|                        | 8/4/21              | NASRA Annual Conference 2021                   | Online           | Conference | -             | 395.00          | -             | -               | -               | -             | -     | 395.00           | -                |
|                        | 11/9-11/12/21       | SACRS Fall 2021 Conference                     | Los Angeles, CA  | Conference | -             | 120.00          | -             | -               | 902.79          | -             | -     | 1,022.79         | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>985.00</b>   | -             | -               | <b>902.79</b>   | -             | -     | <b>1,887.79</b>  | <b>515.00</b>    |
| TAGALOA                | 2/2-2/3/21          | NCPERS Fall Conference                         | Online           | Conference | -             | 300.00          | -             | -               | -               | -             | -     | 300.00           | -                |
|                        | 3/8-3/9/21          | CALAPRS General Assembly 2021                  | Online           | Conference | -             | 250.00          | -             | -               | -               | -             | -     | 250.00           | -                |
|                        | 5/10/21             | CALAPRS Trustees Round Table                   | Online           | Training   | -             | 50.00           | -             | -               | -               | -             | -     | 50.00            | -                |
|                        | 5/11-5/14/21        | SACRS Spring 2021 Conference                   | Online           | Conference | -             | 120.00          | -             | -               | -               | -             | -     | 120.00           | -                |
|                        | 8/4/21              | NASRA Annual Conference 2021                   | Online           | Conference | -             | 395.00          | -             | -               | -               | -             | -     | 395.00           | -                |
|                        | 8/22-9/24/21        | NCPERS 2021 Public Pension Funding Forum       | New York, NY     | Training   | -             | 685.00          | -             | 615.80          | 706.44          | 205.88        | -     | 2,213.12         | -                |
|                        | 9/28/21             | CALAPRS Principles for Trustees 2021           | Online           | Training   | -             | 500.00          | -             | -               | -               | -             | -     | 500.00           | -                |
|                        | 10/25-10/27/21      | 18th Annual Global ARC Boston                  | Boston, MA       | Conference | 36.40         | 300.00          | 140.33        | 446.80          | 1,700.24        | -             | -     | 2,623.77         | -                |
|                        | 10/29/21            | CALAPRS Trustees Round Table                   | Online           | Training   | -             | 50.00           | -             | -               | -               | -             | -     | 50.00            | -                |
|                        | 11/9-11/12/21       | SACRS Fall 2021 Conference                     | Los Angeles, CA  | Conference | -             | 120.00          | 26.84         | -               | 902.79          | 161.70        | -     | 1,211.33         | -                |
| <b>Sub Total</b>       |                     |  |                  |            | <b>36.40</b>  | <b>2,770.00</b> | <b>167.17</b> | <b>1,062.60</b> | <b>3,309.47</b> | <b>367.58</b> | -     | <b>7,713.22</b>  | <b>2,058.45</b>  |
| VALLONE                | 5/11-5/14/21        | SACRS Spring 2021 Conference                   | Online           | Conference | -             | 120.00          | -             | -               | -               | -             | -     | 120.00           | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>120.00</b>   | -             | -               | -               | -             | -     | <b>120.00</b>    | -                |
| <b>BOARD Total</b>     |                     |  |                  |            | <b>495.60</b> | <b>6,475.00</b> | <b>232.06</b> | <b>2,166.36</b> | <b>8,788.48</b> | <b>736.89</b> | -     | <b>18,894.39</b> | <b>9,431.34</b>  |
| DELANEY                | 2/11/21             | CALAPRS Virtual Administrators Round Table     | Online           | Conference | -             | 50.00           | -             | -               | -               | -             | -     | 50.00            | -                |
|                        | 2/22-2/24/21        | NASRA Winter System Round Table                | Online           | Conference | -             | 350.00          | -             | -               | -               | -             | -     | 350.00           | -                |
|                        | 3/8-3/9/21          | CALAPRS General Assembly 2021                  | Online           | Conference | -             | 250.00          | -             | -               | -               | -             | -     | 250.00           | -                |
|                        | 3/18/21             | Vitech Conference                              | Online           | Conference | -             | 40.00           | -             | -               | -               | -             | -     | 40.00            | -                |
|                        | 3/31/21             | WSJ Pro Artificial Intelligence Forum          | Online           | Training   | -             | 75.00           | -             | -               | -               | -             | -     | 75.00            | -                |
|                        | 5/10/21             | CALAPRS Trustees Round Table                   | Online           | Training   | -             | 50.00           | -             | -               | -               | -             | -     | 50.00            | -                |
|                        | 5/11-5/14/21        | SACRS Spring 2021 Conference                   | Online           | Conference | -             | 120.00          | -             | -               | -               | -             | -     | 120.00           | -                |
|                        | 6/25/21             | CALAPRS Administrators Round Table             | Online           | Training   | -             | 50.00           | -             | -               | -               | -             | -     | 50.00            | -                |
|                        | 6/28/21-7/1/21      | OC Legislative Delegation                      | Washington, D.C. | Meeting    | 46.09         | -               | 350.58        | 646.81          | 436.74          | 245.89        | -     | 1,726.11         | -                |
|                        | 8/4/21              | NASRA Annual Conference 2021                   | Online           | Conference | -             | 395.00          | -             | -               | -               | -             | -     | 395.00           | -                |
|                        | 9/22-9/24/21        | CALAPRS Administrators Institute 2021          | Online           | Training   | -             | 500.00          | -             | -               | -               | -             | -     | 500.00           | -                |
|                        | 10/25-10/27/21      | 18th Annual Global ARC Boston                  | Boston, MA       | Conference | -             | 300.00          | 76.95         | 338.71          | 1,254.67        | 118.88        | -     | 2,089.21         | -                |
|                        | 10/29/21            | CALAPRS Trustees Round Table                   | Online           | Training   | -             | 50.00           | -             | -               | -               | -             | -     | 50.00            | -                |
|                        | 11/9-11/12/21       | SACRS Fall 2021 Conference                     | Los Angeles, CA  | Conference | 46.15         | 120.00          | -             | -               | 476.43          | 58.17         | -     | 700.75           | -                |
| <b>Sub Total</b>       |                     |  |                  |            | <b>92.24</b>  | <b>2,350.00</b> | <b>427.53</b> | <b>985.52</b>   | <b>2,167.84</b> | <b>422.94</b> | -     | <b>6,446.07</b>  | <b>3,792.60</b>  |
| JENIKE                 | 3/8-3/9/21          | CALAPRS General Assembly 2021                  | Online           | Conference | -             | 250.00          | -             | -               | -               | -             | -     | 250.00           | -                |
|                        | 5/11-5/14/21        | SACRS Spring 2021 Conference                   | Online           | Conference | -             | 120.00          | -             | -               | -               | -             | -     | 120.00           | -                |
|                        | 6/25/21             | CALAPRS Benefits Round Table                   | Online           | Training   | -             | 50.00           | -             | -               | -               | -             | -     | 50.00            | -                |
|                        | 8/4/21              | NASRA Annual Conference 2021                   | Online           | Conference | -             | 395.00          | -             | -               | -               | -             | -     | 395.00           | -                |
|                        | 8/23/21             | CALAPRS Management/Leadership Forum 2021       | Online           | Training   | -             | 500.00          | -             | -               | -               | -             | -     | 500.00           | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>1,315.00</b> | -             | -               | -               | -             | -     | <b>1,315.00</b>  | <b>916.31</b>    |
| SHOTT                  | 3/8-3/9/21          | CALAPRS General Assembly 2021                  | Online           | Conference | -             | 250.00          | -             | -               | -               | -             | -     | 250.00           | -                |
|                        | 3/18/21             | Vitech Conference                              | Online           | Conference | -             | 40.00           | -             | -               | -               | -             | -     | 40.00            | -                |
|                        | 4/14/21             | 2021 LCW Annual Conference                     | Online           | Conference | -             | 625.00          | -             | -               | -               | -             | -     | 625.00           | -                |
|                        | 5/11-5/14/21        | SACRS Spring 2021 Conference                   | Online           | Conference | -             | 120.00          | -             | -               | -               | -             | -     | 120.00           | -                |
|                        | 7/12/21             | GFOA Conference                                | Online           | Conference | -             | 535.00          | -             | -               | -               | -             | -     | 535.00           | -                |
|                        | 8/4/21              | NASRA Annual Conference 2021                   | Online           | Conference | -             | 395.00          | -             | -               | -               | -             | -     | 395.00           | -                |
|                        | 9/24-9/25/21        | CALAPRS Administrators Institute 2021          | Online           | Training   | -             | 500.00          | -             | -               | -               | -             | -     | 500.00           | -                |
|                        | 10/19-10/29/21      | P2F2 Conference 2021                           | Online           | Training   | -             | 500.00          | -             | -               | -               | -             | -     | 500.00           | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>2,965.00</b> | -             | -               | -               | -             | -     | <b>2,965.00</b>  | <b>8,798.34</b>  |
| TORRES                 | Varies              | Leadership Development for Executive Assistant | Online           | Training   | -             | 170.10          | -             | -               | -               | -             | -     | 170.10           | -                |
| <b>Sub Total</b>       |                     |  |                  |            | -             | <b>170.10</b>   | -             | -               | -               | -             | -     | <b>170.10</b>    | <b>149.00</b>    |
| <b>EXECUTIVE Total</b> |                     |  |                  |            | <b>92.24</b>  | <b>6,800.10</b> | <b>427.53</b> | <b>985.52</b>   | <b>2,167.84</b> | <b>422.94</b> | -     | <b>10,896.17</b> | <b>13,656.23</b> |

01-18-2022 REGULAR BOARD MEETING - R-10 Fourth Quarter 2021 Travel and Training Expense Report

TRAVEL AND TRAINING EXPENSE REPORT  
FOURTH QUARTER 2021  
Submitted Through December 31, 2021\*\*

| Name                  | Trip OR Class Dates | Trip Name  | Destination       | Trip Type  | Mileage | Reg. Fee | Meals | Airfare | Hotel    | Trans. | Misc. | 2021 YTD Total | 2020 Total* |
|-----------------------|---------------------|--|-------------------|------------|---------|----------|-------|---------|----------|--------|-------|----------------|-------------|
| BEESON                | 5/11-5/14/21        | SACRS Spring 2021 Conference                         | Online            | Conference | -       | 120.00   | -     | -       | -        | -      | -     | 120.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 120.00   | -     | -       | -        | -      | -     | 120.00         | 2,339.42    |
| CHARY                 | 3/16/21             | CALAPRS Investments Round Table                      | Online            | Training   | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
|                       | 5/11-5/14/21        | SACRS Spring 2021 Conference                         | Online            | Conference | -       | 120.00   | -     | -       | -        | -      | -     | 120.00         | -           |
|                       | Varies              | UCLA High Performing Teams Program                   | Online            | Training   | -       | 4,400.00 | -     | -       | -        | -      | -     | 4,400.00       | -           |
| Sub Total             |                     |  |                   |            | -       | 4,570.00 | -     | -       | -        | -      | -     | 4,570.00       | -           |
| CLEBERG               |                     |  |                   |            | -       | -        | -     | -       | -        | -      | -     | 0.00           | -           |
| Sub Total             |                     |  |                   |            | -       | -        | -     | -       | -        | -      | -     | 0.00           | 684.96      |
| DEPAULA               | 4/23/21             | CALAPRS Overview Course in Retirement Plan Admin     | Online            | Training   | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
|                       | 11/3/21             | CALAPRS Intermediate Course in Retirement Plan Admin | Online            | Training   | -       | 200.00   | -     | -       | -        | -      | -     | 200.00         | -           |
|                       | 12/8/21             | CALAPRS Advanced Course in Retirement Plan Admin     | Online            | Training   | -       | 200.00   | -     | -       | -        | -      | -     | 200.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 500.00   | -     | -       | -        | -      | -     | 500.00         | -           |
| JJ                    | 2/18/21             | A Conversation with Dr. Ben Bemanke                  | Online            | Training   | -       | 20.00    | -     | -       | -        | -      | -     | 20.00          | -           |
|                       | Varies              | Alternative Investment Series 2021                   | Online            | Training   | -       | 250.00   | -     | -       | -        | -      | -     | 250.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 270.00   | -     | -       | -        | -      | -     | 270.00         | 400.00      |
| MURPHY                | 3/8-3/9/21          | CALAPRS General Assembly 2021                        | Online            | Conference | -       | 250.00   | -     | -       | -        | -      | -     | 250.00         | -           |
|                       | 3/16/21             | CALAPRS Investments Round Table                      | Online            | Training   | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
|                       | 5/11-5/14/21        | SACRS Spring 2021 Conference                         | Online            | Conference | -       | 120.00   | -     | -       | -        | -      | -     | 120.00         | -           |
|                       | 7/14/21             | PIMCO CIO Conference                                 | Los Angeles, CA   | Conference | 58.52   | -        | -     | -       | -        | 25.20  | -     | 83.72          | -           |
|                       | 9/28/21             | Women's Private Equity Summit Conference             | Dana Point, CA    | Conference | 27.44   | -        | -     | -       | -        | -      | -     | 27.44          | -           |
|                       | 10/15/21            | LA CIO Luncheon Meeting                              | Long Beach, CA    | Meeting    | 22.81   | -        | -     | -       | -        | -      | -     | 22.81          | -           |
|                       | 10/17/21            | Milken Institute Global Conference                   | Beverly Hills, CA | Conference | 57.48   | -        | -     | -       | 1,430.58 | 75.00  | -     | 1,563.06       | -           |
|                       | 12/8/21             | 2021 CIO Industry Innovation Awards                  | New York, NY      | Meeting    | 58.23   | -        | 22.16 | 686.10  | 1,128.00 | 191.42 | -     | 2,075.91       | -           |
| Sub Total             |                     |  |                   |            | 224.48  | 420.00   | 22.16 | 686.10  | 2,558.58 | 281.62 | -     | 4,192.94       | 2,999.38    |
| NGUYEN                |                     |  |                   |            | -       | -        | -     | -       | -        | -      | -     | 0.00           | -           |
| Sub Total             |                     |  |                   |            | -       | -        | -     | -       | -        | -      | -     | 0.00           | 2,720.21    |
| TURAIGI               |                     |  |                   |            | -       | -        | -     | -       | -        | -      | -     | 0.00           | -           |
| Sub Total             |                     |  |                   |            | -       | -        | -     | -       | -        | -      | -     | 0.00           | 179.52      |
| WALANDER-SARKIN       | 5/11-5/14/21        | SACRS Spring 2021 Conference                         | Online            | Conference | -       | 120.00   | -     | -       | -        | -      | -     | 120.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 120.00   | -     | -       | -        | -      | -     | 120.00         | 3,326.29    |
| INVESTMENTS Total     |                     |  |                   |            | 224.48  | 6,000.00 | 22.16 | 686.10  | 2,558.58 | 281.62 | -     | 9,772.94       | 9,323.49    |
| KINSLER               | 4/13/21             | CALAPRS Communications Round Table                   | Online            | Training   | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
| Sub Total             |                     |  |                   |            | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
| RITCHEY               | 4/13/21             | CALAPRS Communications Round Table                   | Online            | Training   | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
| Sub Total             |                     |  |                   |            | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | 400.00      |
| COMMUNICATIONS Total  |                     |  |                   |            | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | 400.00      |
| MATSUO                | 2/19/21             | CALAPRS Attorneys Round Table                        | Online            | Training   | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
|                       | 5/28/21             | CALAPRS Attorneys Round Table                        | Online            | Training   | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
|                       | 11/9-11/12/21       | SACRS Fall 2021 Conference                           | Los Angeles, CA   | Conference | -       | 120.00   | -     | -       | -        | -      | -     | 120.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 220.00   | -     | -       | -        | -      | -     | 220.00         | 580.00      |
| MCINTOSH              | 2/19/21             | CALAPRS Attorneys Round Table                        | Online            | Training   | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
|                       | 11/9-11/12/21       | SACRS Fall 2021 Conference                           | Los Angeles, CA   | Conference | -       | 120.00   | -     | -       | 898.16   | -      | -     | 1,018.16       | -           |
| Sub Total             |                     |  |                   |            | -       | 170.00   | -     | -       | 898.16   | -      | -     | 1,068.16       | 100.00      |
| RATTO                 | 5/11-5/14/21        | SACRS Spring 2021 Conference                         | Online            | Conference | -       | 120.00   | -     | -       | -        | -      | -     | 120.00         | -           |
|                       | 6/22-6/25/21        | NAPPA Legal Education Conference                     | Online            | Training   | -       | 499.00   | -     | -       | -        | -      | -     | 499.00         | -           |
|                       | 10/5-10/7/21        | NAPPA Legal Education Conference                     | Tempe, AZ         | Conference | -       | -        | 93.91 | 48.98   | 1,019.05 | 64.64  | -     | 1,226.58       | -           |
| Sub Total             |                     |  |                   |            | -       | 619.00   | 93.91 | 48.98   | 1,019.05 | 64.64  | -     | 1,845.58       | 2,177.68    |
| SERPA                 | 6/22-6/24/21        | NAPPA 2021 Legal Education Conference                | Online            | Conference | -       | 499.00   | -     | -       | -        | -      | -     | 499.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 499.00   | -     | -       | -        | -      | -     | 499.00         | -           |
| SINGLETON             | 10/8/21             | CALAPRS Disability Staff Training                    | Online            | Training   | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
|                       | 11/9-11/12/21       | SACRS Fall 2021 Conference                           | Los Angeles, CA   | Conference | 46.14   | 120.00   | -     | -       | -        | 18.00  | -     | 184.14         | -           |
| Sub Total             |                     |  |                   |            | 46.14   | 220.00   | -     | -       | -        | 18.00  | -     | 284.14         | -           |
| LEGAL Total           |                     |  |                   |            | 46.14   | 1,728.00 | 93.91 | 48.98   | 1,917.21 | 82.64  | -     | 3,916.88       | 2,857.68    |
| GUEVARA               | 3/30/21             | Business Writing                                     | Online            | Training   | -       | 256.75   | -     | -       | -        | -      | -     | 256.75         | -           |
|                       | 4/22/21             | Time Management                                      | Online            | Training   | -       | 256.75   | -     | -       | -        | -      | -     | 256.75         | -           |
| Sub Total             |                     |  |                   |            | -       | 513.50   | -     | -       | -        | -      | -     | 513.50         | -           |
| IBARRA                | 4/23/21             | CALAPRS Overview Course in Retirement Plan Admin     | Online            | Training   | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
| LAMBERSON             | 3/18/21             | Vitech Conference                                    | Online            | Conference | -       | 40.00    | -     | -       | -        | -      | -     | 40.00          | -           |
|                       | 8/23/21             | CALAPRS Management/Leadership Forum 2021             | Online            | Training   | -       | 500.00   | -     | -       | -        | -      | -     | 500.00         | -           |
|                       | 9/17/21             | CALAPRS Benefits Round Table                         | Online            | Training   | -       | 50.00    | -     | -       | -        | -      | -     | 50.00          | -           |
|                       | Varies              | LEAN Six Sigma Black Belt Complete Certificate       | Online            | Training   | -       | 1,499.00 | -     | -       | -        | -      | -     | 1,499.00       | -           |
| Sub Total             |                     |  |                   |            | -       | 2,089.00 | -     | -       | -        | -      | -     | 2,089.00       | 450.00      |
| LOPEZ                 | 3/30/21             | Business Writing                                     | Online            | Training   | -       | 256.75   | -     | -       | -        | -      | -     | 256.75         | -           |
|                       | 4/22/21             | Time Management                                      | Online            | Training   | -       | 256.75   | -     | -       | -        | -      | -     | 256.75         | -           |
| Sub Total             |                     |  |                   |            | -       | 513.50   | -     | -       | -        | -      | -     | 513.50         | -           |
| PANAMENO              | 4/23/21             | CALAPRS Overview Course in Retirement Plan Admin     | Online            | Training   | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
| PERSI                 | 3/18/21             | Vitech Conference                                    | Online            | Conference | -       | 40.00    | -     | -       | -        | -      | -     | 40.00          | -           |
| Sub Total             |                     |  |                   |            | -       | 40.00    | -     | -       | -        | -      | -     | 40.00          | -           |
| RODRIGUEZ             | 4/23/21             | CALAPRS Overview Course in Retirement Plan Admin     | Online            | Training   | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
| RUBIO                 | 4/23/21             | CALAPRS Overview Course in Retirement Plan Admin     | Online            | Training   | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 100.00   | -     | -       | -        | -      | -     | 100.00         | -           |
| WOOD                  | 8/23/21             | CALAPRS Management/Leadership Forum 2021             | Online            | Training   | -       | 500.00   | -     | -       | -        | -      | -     | 500.00         | -           |
| Sub Total             |                     |  |                   |            | -       | 500.00   | -     | -       | -        | -      | -     | 500.00         | 200.00      |
| MEMBER SERVICES Total |                     |  |                   |            | -       | 4,056.00 | -     | -       | -        | -      | -     | 4,056.00       | 650.00      |

01-18-2022 REGULAR BOARD MEETING - R-10 Fourth Quarter 2021 Travel and Training Expense Report

TRAVEL AND TRAINING EXPENSE REPORT  
 FOURTH QUARTER 2021  
 Submitted Through December 31, 2021\*\*

| Name                                     | Trip OR Class Dates | Trip Name  | Destination | Trip Type  | Mileage | Reg. Fee        | Meals            | Airfare       | Hotel           | Trans.           | Misc.           | 2021 YTD Total   | 2020 Total*      |
|--|---------------------|--|-------------|------------|---------|-----------------|------------------|---------------|-----------------|------------------|-----------------|------------------|------------------|
| BARKER                                   | 3/19/21             | CALAPRS Accountants Round Table                          | Online      | Conference | -       | 50.00           | -                | -             | -               | -                | -               | 50.00            | -                |
|  | 12/9/21             | GFOA Annual Governmental GAAP Update                     | Online      | Training   | -       | 170.00          | -                | -             | -               | -                | -               | 170.00           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>220.00</b>   |                  |               |                 |                  |                 | <b>220.00</b>    | <b>1,590.00</b>  |
| BOWMAN                                   | 10/19-10/29/21      | 2021 P2F2 Conference                                     | Online      | Conference | -       | 500.00          | -                | -             | -               | -                | -               | 500.00           | -                |
|  | 12/9/21             | GFOA Annual Governmental GAAP Update                     | Online      | Training   | -       | 170.00          | -                | -             | -               | -                | -               | 170.00           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>670.00</b>   |                  |               |                 |                  |                 | <b>670.00</b>    | <b>1,161.15</b>  |
| DAVEY                                    |                     |  |             |            |         | -               | -                | -             | -               | -                | -               | 0.00             | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         |                 |                  |               |                 |                  |                 | <b>400.00</b>    |                  |
| DURIGON                                  | 10/29/21            | Excel Data Analysis with Power Pivot                     | Online      | Training   | -       | 191.75          | -                | -             | -               | -                | -               | 191.75           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>191.75</b>   |                  |               |                 |                  |                 | <b>191.75</b>    | <b>391.75</b>    |
| GUERRERO                                 |                     |  |             |            |         | -               | -                | -             | -               | -                | -               | 0.00             | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         |                 |                  |               |                 |                  |                 | <b>0.00</b>      | <b>702.00</b>    |
| KANG                                     | 3/18/21             | Vitech Conference  | Online      | Conference | -       | 40.00           | -                | -             | -               | -                | -               | 40.00            | -                |
|  | 3/19/21             | CALAPRS Accountants Round Table                          | Online      | Conference | -       | 50.00           | -                | -             | -               | -                | -               | 50.00            | -                |
|  | 12/9/21             | GFOA Annual Governmental GAAP Update                     | Online      | Training   | -       | 170.00          | -                | -             | -               | -                | -               | 170.00           | -                |
|  | Varies              | CalCPA Continuing Education                              | Online      | Training   | -       | 1,385.00        | -                | -             | -               | -                | -               | 1,385.00         | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>1,645.00</b> |                  |               |                 |                  |                 | <b>1,645.00</b>  | <b>872.00</b>    |
| REYES                                    | 3/18/21             | Vitech Conference  | Online      | Conference | -       | 40.00           | -                | -             | -               | -                | -               | 40.00            | -                |
|  | 12/9/21             | GFOA Annual Governmental GAAP Update                     | Online      | Training   | -       | 170.00          | -                | -             | -               | -                | -               | 170.00           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>210.00</b>   |                  |               |                 |                  |                 | <b>210.00</b>    | <b>957.00</b>    |
| <b>FINANCE Total</b>                     |                     |  |             |            |         | <b>2,936.75</b> |                  |               |                 |                  |                 | <b>2,936.75</b>  | <b>6,073.90</b>  |
| ACUNA                                    | 3/30/21             | Business Writing   | Online      | Training   | -       | 256.75          | -                | -             | -               | -                | -               | 256.75           | -                |
|  | 4/22/21             | Time Management  | Online      | Training   | -       | 256.75          | -                | -             | -               | -                | -               | 256.75           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>513.50</b>   |                  |               |                 |                  |                 | <b>513.50</b>    | <b>599.00</b>    |
| CORTEZ                                   |                     |  |             |            |         | -               | -                | -             | -               | -                | -               | 0.00             | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         |                 |                  |               |                 |                  |                 | <b>0.00</b>      | <b>699.00</b>    |
| <b>DISABILITY Total</b>                  |                     |  |             |            |         | <b>513.50</b>   |                  |               |                 |                  |                 | <b>513.50</b>    | <b>1,298.00</b>  |
| DURRAH                                   | 3/30/21             | Business Writing   | Online      | Training   | -       | 256.75          | -                | -             | -               | -                | -               | 256.75           | -                |
|  | 11/3/21             | CALAPRS Intermediate Course in Retirement Plan Admin     | Online      | Training   | -       | 200.00          | -                | -             | -               | -                | -               | 200.00           | -                |
|  | Varies              | 2-Day Drive Results with Talent training                 | Online      | Training   | -       | 2,100.00        | -                | -             | -               | -                | -               | 2,100.00         | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>2,556.75</b> |                  |               |                 |                  |                 | <b>2,556.75</b>  | <b>513.20</b>    |
| GUNSOLLEY                                | 3/30/21             | Business Writing   | Online      | Training   | -       | 256.75          | -                | -             | -               | -                | -               | 256.75           | -                |
|  | 11/3/21             | CALAPRS Intermediate Course in Retirement Plan Admin     | Online      | Training   | -       | 200.00          | -                | -             | -               | -                | -               | 200.00           | -                |
|  | 12/8/21             | CALAPRS Advanced Course in Retirement Plan Admin         | Online      | Training   | -       | 200.00          | -                | -             | -               | -                | -               | 200.00           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>656.75</b>   |                  |               |                 |                  |                 | <b>656.75</b>    | <b>8,500.00</b>  |
| HOCKLESS                                 | 11/3/21             | CALAPRS Intermediate Course in Retirement Plan Admin     | Online      | Training   | -       | 200.00          | -                | -             | -               | -                | -               | 200.00           | -                |
|  | 12/8/21             | CALAPRS Advanced Course in Retirement Plan Admin         | Online      | Training   | -       | 200.00          | -                | -             | -               | -                | -               | 200.00           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>400.00</b>   |                  |               |                 |                  |                 | <b>400.00</b>    | -                |
| WOZNIUK                                  | 3/30/21             | Business Writing   | Online      | Training   | -       | 256.75          | -                | -             | -               | -                | -               | 256.75           | -                |
|  | 3/31/21             | 2-Day Drive Results with Talent training                 | Online      | Training   | -       | 3,080.00        | -                | -             | -               | -                | -               | 3,080.00         | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>3,336.75</b> |                  |               |                 |                  |                 | <b>3,336.75</b>  | -                |
| <b>HUMAN RESOURCES Total</b>             |                     |  |             |            |         | <b>6,950.25</b> |                  |               |                 |                  |                 | <b>6,950.25</b>  | -                |
| DOEJIE                                   | 6/14-6/16/21        | PRIMA (Risk) Conference                                  | Online      | Conference | -       | 315.00          | -                | -             | -               | -                | -               | 315.00           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>315.00</b>   |                  |               |                 |                  |                 | <b>315.00</b>    | <b>375.00</b>    |
| <b>OPERATIONS SUPPORT SERVICES Total</b> |                     |  |             |            |         |                 |                  |               |                 |                  |                 |                  | <b>375.00</b>    |
| <b>I.T. DEPARTMENT TRAINING</b>          |                     |  |             |            |         |                 |                  |               |                 |                  |                 |                  | 0.00             |
| <b>Sub Total</b>                         |                     |  |             |            |         |                 |                  |               |                 |                  |                 |                  | <b>0.00</b>      |
| JOHNSON                                  | 3/18/21             | Vitech Conference  | Online      | Conference | -       | 40.00           | -                | -             | -               | -                | -               | 40.00            | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>40.00</b>    |                  |               |                 |                  |                 | <b>40.00</b>     | -                |
| LARA                                     | 3/18/21             | Vitech Conference  | Online      | Conference | -       | 40.00           | -                | -             | -               | -                | -               | 40.00            | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>40.00</b>    |                  |               |                 |                  |                 | <b>40.00</b>     | -                |
| SADOSKI                                  | 3/18/21             | Vitech Conference  | Online      | Conference | -       | 40.00           | -                | -             | -               | -                | -               | 40.00            | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>40.00</b>    |                  |               |                 |                  |                 | <b>40.00</b>     | -                |
| <b>IT Total</b>                          |                     |  |             |            |         | <b>120.00</b>   |                  |               |                 |                  |                 | <b>120.00</b>    | <b>19,305.42</b> |
| ADVIENTO                                 | 6/23-6/24/21        | CSFMO Introduction to Gov. Accounting                    | Online      | Training   | -       | 75.00           | -                | -             | -               | -                | -               | 75.00            | -                |
|  | 7/13-7/14/21        | CSFMO Investment Accounting                              | Online      | Training   | -       | 150.00          | -                | -             | -               | -                | -               | 150.00           | -                |
|  | 8/24/21             | IIA Training   | Online      | Training   | -       | 165.00          | -                | -             | -               | -                | -               | 165.00           | -                |
|  | 9/1/21              | CSMFO CA Local Budgeting                                 | Online      | Training   | -       | 150.00          | -                | -             | -               | -                | -               | 150.00           | -                |
|  | 10/19-10/29/21      | P2F2 Conference 2021                                     | Online      | Conference | -       | 525.00          | -                | -             | -               | -                | -               | 525.00           | -                |
|  | 11/1/21             | IA OC Fall 1/2 Day Training                              | Online      | Training   | -       | 75.00           | -                | -             | -               | -                | -               | 75.00            | -                |
|  | Varies              | Intermediate Governmental Accounting/Financial Reporting | Online      | Training   | -       | 150.00          | -                | -             | -               | -                | -               | 150.00           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>1,290.00</b> |                  |               |                 |                  |                 | <b>1,290.00</b>  | <b>3,756.20</b>  |
| KIM                                      | 1/21/21             | Fraud & Financial Crimes in the New Age                  | Online      | Training   | -       | 10.00           | -                | -             | -               | -                | -               | 10.00            | -                |
|  | 7/13-7/14/21        | CSFMO Investment Accounting                              | Online      | Training   | -       | 150.00          | -                | -             | -               | -                | -               | 150.00           | -                |
|  | 8/24/21             | IIA Training   | Online      | Training   | -       | 165.00          | -                | -             | -               | -                | -               | 165.00           | -                |
|  | 10/19-10/29/21      | P2F2 Conference 2021                                     | Online      | Conference | -       | 525.00          | -                | -             | -               | -                | -               | 525.00           | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>850.00</b>   |                  |               |                 |                  |                 | <b>850.00</b>    | <b>1,220.00</b>  |
| <b>INTERNAL AUDIT Total</b>              |                     |  |             |            |         | <b>2,140.00</b> |                  |               |                 |                  |                 | <b>2,140.00</b>  | <b>4,976.20</b>  |
| EAKIN                                    | 3/18/21             | Vitech Conference  | Online      | Conference | -       | 40.00           | -                | -             | -               | -                | -               | 40.00            | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         | <b>40.00</b>    |                  |               |                 |                  |                 | <b>40.00</b>     | <b>2,510.40</b>  |
| GOSSARD                                  |                     |  |             |            |         | -               | -                | -             | -               | -                | -               | 0.00             | -                |
| <b>Sub Total</b>                         |                     |  |             |            |         |                 |                  |               |                 |                  |                 | <b>0.00</b>      | <b>2,555.40</b>  |
| <b>INFORMATION SECURITY Total</b>        |                     |  |             |            |         | <b>40.00</b>    |                  |               |                 |                  |                 | <b>40.00</b>     | <b>5,065.80</b>  |
| <b>Total</b>                             |                     |  |             |            |         | <b>858.46</b>   | <b>38,174.60</b> | <b>775.66</b> | <b>3,886.96</b> | <b>15,432.11</b> | <b>1,524.09</b> | <b>60,651.98</b> | <b>85,752.57</b> |

Footnotes:

\* Prior year totals only presented for 2021 active staff & Board members. Totals include online training.

\*\* Excludes non-training expenses such as meetings, mileage, strategic planning and tuition reimbursement.



## Memorandum

---

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Cynthia Hockless, Director of Human Resources  
**SUBJECT:** **OCERS TRUSTEE EDUCATION SUMMARY REPORT**

---

### Written Report

Effective January 1, 2013, Trustees are required to complete a minimum of 24 hours of Trustee Education within the first two (2) years assuming office and for every subsequent 2-year period in which the Trustee serves on the Board.

Trustees that commenced membership on the Board after the initial tracking period will reset their two-year period on anniversary date of assumed Board membership.

Staff annually prepares a spreadsheet for each Trustee to track their education credits. The following is the current hourly total we have on file for each Trustee for their current measuring period:

**Shawn Dewane – appointed 2017, current term 01/01/2020 – 12/31/2022**

For Current Education Measuring Period 1/21-12/22: **28.75 hours**

**Frank Eley – elected 2016, current term 01/01/2020 – 12/31/2022**

For Current Education Measuring Period 1/21-12/22: **18.75 hours**

**Shari Freidenrich – elected Nov. 2010, took office in Jan. 2011, current term [Ex-Officio Member]**

For Current Education Measuring Period 1/21-12/22: **32.75 hours**

**Richard Oates – elected May 2021, current term [7/01/2021-06/30/2024]**

For Current Education Measuring Period 7/21-12/22: **44.25 hours**

**Wayne Lindholm – appointed Jan. 2010, current term 01/1/2019 – 12/31/2021**

For Current Education Measuring Period 1/20-12/21: **25.75 hours**

**Charles Packard – appointed Dec. 2011, current term 1/01/2020 – 12/31/2022**

For Current Education Measuring Period 1/20-12/21: **42.25 hours**

**Chris Prevatt – elected Fall 2012, current term 01/01/2022 – 12/31/2024**

For Current Education Measuring Period 1/20-12/21: **96.60 hours**

**Jeremy Vallone – elected 2018, current term [7/01/21-6/30/24]**

For Current Education Measuring Period 1/20-12/21: **24.25 hours**

**Adele Tagaloa – elected 2020, current term 01/01/2020 – 12/31/2022**

For Current Education Measuring Period 1/20-12/21: **190.75 hours**

**Arthur Hidalgo – elected 2019, current term 01/01/2020 – 12/31/2022**

For Current Education Measuring Period 1/20-12/21: **26.25 hours**

**Attachments:**

1. Board Members individual annual Education Report for current two year measuring period.
2. Trustee Education Policy.

**Submitted by:**



**CH - Approved**

---

Cynthia Hockless  
Director of Human Resources



## OCERS Board Policy Trustee Education Policy

---

### Purpose

1. It is the policy of the Board of Retirement to ensure that individual Trustees have sufficient knowledge of the issues and challenges facing OCERS so as to craft policies to guide the administration of the plan and effectively monitor their implementation based on ongoing exposure to up-to-date benefit, financial, investment and policy information and together with staff are properly trained to perform their respective duties.
2. Effective January 1, 2013, Trustees are required to complete a minimum of 24 hours of Trustee education within the first two (2) years of assuming office and for every subsequent 2-year period in which the Trustee serves on the Board (Gov. Code § 31522.8).
3. Trustees are also required to complete two hours of ethics training every two years. (Gov. Code § 53235) Ethics training received as part of the 24 hours of Trustee education will satisfy this requirement.
4. Trustees are also required to complete two hours of harassment prevention training every two years. (Gov. Code § 12950.1) Harassment prevention training is in addition to the 24 hour education requirement set forth in Gov. Code § 31522.8.
5. To that end, each Trustee is encouraged to regularly participate in those educational opportunities that will enable competent discharge of the obligations of that position and meet the statutory requirements for continuing education.

### Policy Objectives

6. The objective of this policy is to ensure that all Trustees have adequate opportunity to acquire the knowledge they need to carry out their fiduciary duties.

### Policy Guidelines

7. Trustees agree to develop and maintain knowledge of relevant issues pertaining to the administration of OCERS throughout their terms.
8. Trustees agree to pursue appropriate education across a range of pension-related areas, rather than limiting their education to specific areas. General pension-related areas to be pursued include:
  - a. Pension funding;
  - b. Institutional investments and investment program management;
  - c. Investment performance measurement;
  - d. Actuarial science;
  - e. Benefits structure and administration;
  - f. Disability retirements;
  - g. Due process in benefit determinations;



## OCERS Board Policy Trustee Education Policy

---

- h. Pension law;
  - i. Organizational structure, methods, and practices;
  - j. Budgeting;
  - k. Governance and fiduciary duty; and
  - l. Ethics.
9. Trustees agree that at least two hours of education they receive will qualify as ethics training relevant to the Trustees' public service. Subject matter that qualifies for ethics training includes, but is not limited to:
- a. Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.
  - b. Laws relating to claiming prerequisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.
  - c. Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.
  - d. Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.
10. Educational tools for trustees include, but are not limited to:
- a. External conferences, seminars, workshops, roundtables, courses or similar sessions (henceforth referred to collectively as "conferences");
  - b. Industry association meetings or events;
  - c. In-house educational seminars or briefings;
  - d. Periodicals, journals, textbooks and similar materials; and
  - e. Electronic media including CD ROM-based education, Internet-based education and video-based education.
11. On an ongoing basis, the Chief Executive Officer and the Chief Investment Officer will identify appropriate educational opportunities, based on the needs of individual Trustees or the Board as a whole, and include details of such in Board meeting information packages for Trustee consideration. Trustees are encouraged to suggest educational opportunities that may provide value to the Board of Retirement.
12. Standards for determining the appropriateness of a potential educational opportunity shall include:
- a. The extent to which the opportunity is expected to provide Trustees with the knowledge they need to carry out their roles and responsibilities;
  - b. The extent to which the opportunity meets the requirements of this policy; and



## OCERS Board Policy

# Trustee Education Policy

---

- c. The cost-effectiveness of the program in light of travel, lodging and related expenses.
13. Beginning January 1, 2013, Trustees will acquire a minimum of 24 hours of Trustee education within the first two (2) years of assuming office and for every subsequent 2-year period for which the Trustee serves on the Board.
- a. Trustees will endeavor to complete 24 hours of education in the remainder of the first and second calendar year after appointment. For trustees who are appointed later in November or December, the first education year will commence on January 1 of the subsequent calendar year.
  - b. After the initial two years after assuming office, education hours will be tracked on a calendar year basis with each trustee required to complete 24 hours of education within each two year period.
  - c. OCERS staff will track hours on an odd and even year basis with trustees grouped according to the year of term commencement.
  - d. For example, if a trustee assumes office on April 1, 2016, he or she will be expected to complete 24 hours of education by December 31, 2017. Subsequent to January 1, 2018, his or her education will be tracked on a rolling basis with completion of the 24 hour requirement on December 31, 2019, 2021, 2023, etc.
14. Trustees will attempt to meet the following minimum goals:
- a. To secure, over time, a useful level of understanding in each of the topic areas listed in paragraph 8 above;
  - b. To attend at least one conference annually. In accordance with a. above, Trustees are encouraged to attend conferences, on occasion, that address pension topics other than investments; and
  - c. Participate in any in-house educational seminars or briefings that are organized by the Chief Executive Officer and Chief Investment Officer including:
    - i. The educational component of the annual Strategic Planning Session;
    - ii. The Education Forum;
    - iii. Individual sessions at regular Board meetings; and
    - iv. Workshops available to Board and staff members.
15. The Board shall maintain a record of Trustee compliance with this policy, and the Chief Executive Officer or his designee will ensure that the policy and annual compliance report are placed on the OCERS website.

### **Attendance at Conferences & Industry Association Meetings**

16. Approval for attendance and reimbursement of travel expenses in connection with educational conferences and industry association meetings will be in accordance with the Travel Policy.
17. In furtherance of this policy, the Chief Executive Officer shall have discretionary authority to approve staff travel as necessary to carry out the administrative responsibilities of the OCERS,





## OCERS Board Policy Trustee Education Policy

---

such as attendance at legislative meetings or hearings, conducting on-site visits as part of due diligence evaluation of existing and proposed service providers, participating in continuing education programs, and other duties as directed.

18. The Board will periodically review the programs, training or educational sessions that qualify for Trustee education.

### Harassment Prevention Training

19. As an employer of over 5 employees, OCERS is required to provide two hours of harassment and abusive conduct prevention training to all "supervisory employees" every two years, and (effective calendar year 2020) one hour of prevention training to all nonsupervisory employees.
20. Trustees are considered "supervisory employees" for the purposes of the statute since Trustees may influence the terms and conditions of employment for OCERS employees.
21. The Chief Executive Officer working with the Legal Department and outside vendors will schedule appropriate training for Trustees every two years.

### Orientation Program

22. Working with the Chief Investment Officer and OCERS' professional advisors, the Chief Executive Officer will hold an orientation program, covering the general topic areas outlined in paragraph 8 above, and designed to introduce new Trustees to all pertinent operations of the System and highlight the knowledge bases required of a Trustee. The aim of the orientation program will be to ensure that new Trustees are in a position to contribute fully to Board of Retirement and committee deliberations, and effectively carry out their fiduciary duties as soon as possible after joining the Board.
23. Prior to a Trustee's first official meeting with the Board of Retirement, he or she will endeavor to attend a Board meeting or a standing committee meeting in the role of an observer.
24. Within 30 days of a trustee's election or appointment to the Board, the Chair will designate an incumbent member of the Board to provide the new Trustee an orientation to current Board governance practices.
25. As part of the orientation process, new Trustees will, within 30 days of their election or appointment to the Board of Retirement:
  - a. Be briefed by the Chief Executive Officer on the history and background of OCERS;
  - b. Be oriented by the Chair on current issues before the Board;
  - c. Be introduced to members of senior management;
  - d. Be provided a tour of OCERS offices by the Chief Executive Officer;
  - e. Be briefed by the Board's fiduciary counsel on their fiduciary duties, conflict of interest guidelines, the County Employees Retirement Law of 1937, Proposition 162, The Brown Act, and other pertinent legislation; and



## OCERS Board Policy Trustee Education Policy

- f. Be provided with an iPad (or other electronic device) with access to a document repository containing the following:
  - i. A Trustee Reference Manual (the contents of which are listed in the Appendix);
  - ii. A listing of upcoming recommended educational opportunities; and
  - iii. Other relevant information and documentation deemed appropriate by the Chief Executive Officer.
- 26. During the course of their first 12 months on the Board of Retirement, new Trustees will endeavor to attend a seminar on the principles of pension management or a comparable program.
- 27. The Chief Executive Officer will review, and if necessary, update all orientation material. It is the responsibility of Trustees to maintain their Trustee Reference Manuals, by ensuring that they contain the most up to date materials. A master copy of the Trustee Reference Manual will be available for use by Trustees at the OCERS office.

### Policy Review

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

### Policy History

- 29. This policy was adopted by the Board of Retirement on February 19, 2002.
- 30. The policy was revised on May 16, 2005, March 24, 2008, June 18, 2012, November 19, 2012, July 20, 2015, and December 19, 2016, September 25, 2019

### Secretary's Certificate

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

10/21/19

Date

Steve Delaney  
Secretary of the Board



## OCERS Board Policy

# APPENDIX 1

---

## Trustee Reference Manual

A Trustee Reference Manual will include the following materials:

- a. OCERS Board Handbook;
- b. Relevant sections of the *County Employees Retirement Law of 1937*;
- c. The Brown Act and Proposition 162;
- d. Most recent plan description and member handbook;
- e. Copies of Board policies;
- f. Most recent Annual Report;
- g. Most recent actuarial valuation and financial statements;
- h. Most recent actuarial experience study;
- i. Most recent asset/liability study;
- j. Most recent investment performance report;
- k. Most recent Business Plan and budget;
- l. Organizational chart;
- m. Names and phone numbers of the trustees and the Chief Executive Officer;
- n. Listing of current committee assignments;
- o. Listing of current service providers; and
- p. Glossary of key pension administration terms and definitions.



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Dewane, Shawn

Date Range: 1/1/2021 - 1/5/2022



#### BOARD

**Dewane, Shawn (25 Records)** **Total Hours: 28.75**

| Title   | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|------------------|-----------|------------|-----------------|-------|
| PENSION OBLIGATION BONDS – AN OVERVIEW                                      | Continuing Education | Segal Consulting | Completed | 01/19/2021 | 01/19/2021      | 1.00  |
| <b>Description:</b> <i>by Paul Angelo and Todd Tauzer, Segal Consulting</i> |                      |                  |           |            |                 |       |

| Title                                  | Type                 | Institution                | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|----------------------------|-----------|------------|-----------------|-------|
| Private Equity Co-investment Education | Continuing Education | OCERS February I/C Meeting | Completed | 02/24/2021 | 02/24/2021      | 1.00  |
| <b>Description:</b>                    |                      |                            |           |            |                 |       |

| Title                              | Type                 | Institution             | Status    | Due Date   | Completion Date | Hours |
|------------------------------------|----------------------|-------------------------|-----------|------------|-----------------|-------|
| Global Economic Outlook Discussion | Continuing Education | OCERS March I/C Meeting | Completed | 03/24/2021 | 03/24/2021      | 1.00  |
| <b>Description:</b><br>            |                      |                         |           |            |                 |       |

| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-----------------------------------|-----------|------------|-----------------|-------|
| Annual Fiduciary Education                        | Continuing Education | OCERS April Regular Board Meeting | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman |                      |                                   |           |            |                 |       |

| Title                   | Type                 | Institution             | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------------------|-----------|------------|-----------------|-------|
| China Education Session | Continuing Education | OCERS I/C April Meeting | Completed | 04/21/2021 | 04/21/2021      | 1.00  |
| <b>Description:</b>     |                      |                         |           |            |                 |       |

| Title                                | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
|--------------------------------------|----------------------|-----------------------|-----------|------------|-----------------|-------|
| The Townsend Group View of the World | Continuing Education | OCERS I/C May Meeting | Completed | 05/26/2021 | 05/26/2021      | 1.00  |
| <b>Description:</b>                  |                      |                       |           |            |                 |       |

| Title | Type | Institution | Status | Due Date | Completion Date | Hours |
|-------|------|-------------|--------|----------|-----------------|-------|
|-------|------|-------------|--------|----------|-----------------|-------|

Executed: 1/5/2022 9:24:22 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 1 of 5



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Dewane, Shawn

Date Range: 1/1/2021 - 1/5/2022



|  |                      |                          |           |            |            |      |
|--|----------------------|--------------------------|-----------|------------|------------|------|
| Investment Advisory: Fiduciary Standard of Conduct, Client Discovery, Account Recommendations, Monitoring, Documentation | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021 | 1.00 |
|--|----------------------|--------------------------|-----------|------------|------------|------|

**Description:**

| Title   | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Variable Annuity: Advantages/Disadvantages, Insurance Benefits of Living and Death Benefit Riders, Structured Annuities, Buyout Offers. Suitability and Documentation | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |

**Description:** Variable Annuity&#58; Advantages/Disadvantages, Insurance Benefits of Living and Death Benefit Riders, Structured Annuities, Buyout Offers. Suitability and Documentation

| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Senior and At Risk Clients: Diminished Capacity, Financial Exploitation, Trusted Contact and Powers of Attorney, Regulator Focus, Legislator Focus | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |

**Description:** Senior and At Risk Clients&#58; Diminished Capacity, Financial Exploitation, Trusted Contact and Powers of Attorney, Regulator Focus, Legislator Focus

| Title   | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Fraud, Identity Theft, Anti Bribery, Anti Corruption: Fraud and Identity Theft, Anti- Bribery / Anti-Corruption | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |

**Description:** Fraud, Identity Theft, Anti Bribery, Anti Corruption&#58; Fraud and Identity Theft, Anti- Bribery / Anti-Corruption

| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Regulatory Requirements: Information, Privacy and Risk: Data Privacy & Protection, Information Security, Information Governance, Third Party Suppliers Business Continuity | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |

Executed: 1/5/2022 9:24:22 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 2 of 5



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Dewane, Shawn

Date Range: 1/1/2021 - 1/5/2022



**Description:** Regulatory Requirements&#58; Information, Privacy and Risk&#58; Data Privacy & Protection, Information Security, Information Governance, Third Party Suppliers Business Continuity

| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Regulatory Requirements: Conflicts of Interest, Client Complaints and Dispute Resolution, Confidential Information, Risk Management, Restricted Securities, Code of Conduct and Ethics | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |

**Description:** Regulatory Requirements&#58; Conflicts of Interest, Client Complaints and Dispute Resolution, Confidential Information, Risk Management, Restricted Securities, Code of Conduct and Ethics

| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Supervision CE: General Issues / Focus, Communications with the Public, Products, Firm and Regulatory Requirements | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |

**Description:** Supervision CE&#58; General Issues / Focus, Communications with the Public, Products, Firm and Regulatory Requirements

| Title   | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Compliance CE: Client Best Interest, Product Offerings, Advisor Practices and Branch Operations | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |

**Description:** Compliance CE&#58; Client Best Interest, Product Offerings, Advisor Practices and Branch Operations

| Title   | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Anti Money Laundering and Financial Crimes Management: Know Your Customer, Economic Sanctions, Money Laundering, High Risk Securities | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |

**Description:** Anti Money Laundering and Financial Crimes Management&#58; Know Your Customer, Economic Sanctions, Money Laundering, High Risk Securities

| Title | Type | Institution | Status | Due Date | Completion Date | Hours |
|-------|------|-------------|--------|----------|-----------------|-------|
|-------|------|-------------|--------|----------|-----------------|-------|

Executed: 1/5/2022 9:24:22 AM  
 Executed By: OCERS\ctorres



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Dewane, Shawn

Date Range: 1/1/2021 - 1/5/2022



| California Consumer Privacy Act: What is CCPA, Third Party Suppliers, FA's with Outside Business Activities, Independent Registered FA's - Exempt Third Party Status                         | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |
|--|----------------------|--------------------------|-----------|------------|-----------------|-------|
| <b>Description:</b> California Consumer Privacy Act&#58; What is CCPA, Third Party Suppliers, FA's with Outside Business Activities, Independent Registered FA's - Exempt Third Party Status |                      |                          |           |            |                 |       |
| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
| 2021 Fair Credit Reporting Act Authorization - California: 2021 Fair Credit Reporting Act Disclosure and Authorization   | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |
| <b>Description:</b> 2021 Fair Credit Reporting Act Authorization - California&#58; 2021 Fair Credit Reporting Act Disclosure and Authorization   |                      |                          |           |            |                 |       |
| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
| 2021 Alternative Investments: Alternative Investments, Alternative Mutual Funds  | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |
| <b>Description:</b> 2021 Alternative Investments&#58; Alternative Investments, Alternative Mutual Funds  |                      |                          |           |            |                 |       |
| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
| Consolidated Order Entry   | Continuing Education | Raymond James University | Completed | 09/30/2021 | 09/30/2021      | 1.00  |
| <b>Description:</b> Consolidated Order Entry   |                      |                          |           |            |                 |       |
| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
| 2021 Strategic Planning Workshop   | Continuing Education |                          | Completed | 09/09/2021 | 09/09/2021      | 3.25  |
| <b>Description:</b> Investment and Non Investment Education Credit   |                      |                          |           |            |                 |       |
| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
| ASSET BASED LENDING OVERVIEW   | Continuing Education |                          | Completed | 10/27/2021 | 10/27/2021      | 1.00  |
| <b>Description:</b> Investment Committee Meeting Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI  |                      |                          |           |            |                 |       |

Executed: 1/5/2022 9:24:22 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 4 of 5



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Dewane, Shawn

Date Range: 1/1/2021 - 1/5/2022



| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS November Investment Meeting | Continuing Education | OCERS       | Completed | 11/17/2021 | 11/17/2021      | 1.00  |

**Description:** Blockchain and the Rise of Decentralization

| Title              | Type                 | Institution                      | Status    | Due Date   | Completion Date | Hours |
|--------------------|----------------------|----------------------------------|-----------|------------|-----------------|-------|
| Ethics Certificate | Continuing Education | CA Local Agency Ethics (AB 1234) | Completed | 11/29/2021 | 11/29/2021      | 2.00  |

**Description:**

| Title   | Type                 | Institution         | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|---------------------|-----------|------------|-----------------|-------|
| Anti-Harassment Training for Supervisors and Managers | Continuing Education | Mesa Water District | Completed | 11/29/2021 | 11/29/2021      | 2.00  |

**Description:** California (SB1343/AB1825)

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Infrastructure Overview | Continuing Education | OCERS       | Completed | 12/13/2021 | 12/13/2021      | 1.00  |

**Description:** Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak





### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Eley, Frank

Date Range: 1/1/2021 - 1/5/2022



#### BOARD

**Eley, Frank (11 Records)** **Total Hours: 18.75**

| Title   | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|------------------|-----------|------------|-----------------|-------|
| PENSION OBLIGATION BONDS – AN OVERVIEW                                      | Continuing Education | Segal Consulting | Completed | 01/19/2021 | 01/19/2021      | 1.00  |
| <b>Description:</b> <i>by Paul Angelo and Todd Tauzer, Segal Consulting</i> |                      |                  |           |            |                 |       |

| Title                                  | Type                 | Institution                | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|----------------------------|-----------|------------|-----------------|-------|
| Private Equity Co-investment Education | Continuing Education | OCERS February I/C Meeting | Completed | 02/24/2021 | 02/24/2021      | 1.00  |
| <b>Description:</b>                    |                      |                            |           |            |                 |       |

| Title                              | Type                 | Institution             | Status    | Due Date   | Completion Date | Hours |
|------------------------------------|----------------------|-------------------------|-----------|------------|-----------------|-------|
| Global Economic Outlook Discussion | Continuing Education | OCERS March I/C Meeting | Completed | 03/24/2021 | 03/24/2021      | 1.00  |
| <b>Description:</b><br>            |                      |                         |           |            |                 |       |

| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-----------------------------------|-----------|------------|-----------------|-------|
| Annual Fiduciary Education                        | Continuing Education | OCERS April Regular Board Meeting | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman |                      |                                   |           |            |                 |       |

| Title                   | Type                 | Institution             | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------------------|-----------|------------|-----------------|-------|
| China Education Session | Continuing Education | OCERS I/C April Meeting | Completed | 04/21/2021 | 04/21/2021      | 1.00  |
| <b>Description:</b>     |                      |                         |           |            |                 |       |

| Title                                | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
|--------------------------------------|----------------------|-----------------------|-----------|------------|-----------------|-------|
| The Townsend Group View of the World | Continuing Education | OCERS I/C May Meeting | Completed | 05/26/2021 | 05/26/2021      | 1.00  |
| <b>Description:</b>                  |                      |                       |           |            |                 |       |

| Title | Type | Institution | Status | Due Date | Completion Date | Hours |
|-------|------|-------------|--------|----------|-----------------|-------|
|-------|------|-------------|--------|----------|-----------------|-------|

Executed: 1/5/2022 9:36:17 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 1 of 2



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board  
Date Range: 1/1/2021 - 1/5/2022

Employee: Eley, Frank



|                                  |                      |  |           |            |            |      |
|----------------------------------|----------------------|--|-----------|------------|------------|------|
| 2021 Strategic Planning Workshop | Continuing Education |  | Completed | 09/09/2021 | 09/09/2021 | 3.25 |
|----------------------------------|----------------------|--|-----------|------------|------------|------|

**Description:** Investment and Non Investment Education Credit

| Title                        | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| ASSET BASED LENDING OVERVIEW | Continuing Education |             | Completed | 10/27/2021 | 10/27/2021      | 1.00  |

**Description:** Investment Committee Meeting  
Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI

| Title                 | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
|-----------------------|----------------------|--|-----------|------------|-----------------|-------|
| SACRS Fall Conference | Continuing Education | State Association of County Retirement Systems (SACRS) | Completed | 11/10/2021 | 11/10/2021      | 6.00  |

**Description:**

| Title   | Type               | Institution  | Status    | Due Date   | Completion Date | Hours |
|---|--------------------|--|-----------|------------|-----------------|-------|
| SACRS / SEXUAL HARASSMENT PREVENTION TRAINING | Mandatory Training | State Association of County Retirement Systems (SACRS) | Completed | 11/10/2021 | 11/10/2021      | 2.00  |

**Description:**

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Infrastructure Overview | Continuing Education | OCERS       | Completed | 12/13/2021 | 12/13/2021      | 1.00  |

**Description:** Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak

Executed: 1/5/2022 9:36:17 AM  
Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
Page 2 of 2



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Freidenrich, Shari

Date Range: 1/1/2021 - 12/31/2022



#### BOARD

**Freidenrich, Shari (10 Records)** **Total Hours: 32.75**

| Title   | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|------------------|-----------|------------|-----------------|-------|
| PENSION OBLIGATION BONDS – AN OVERVIEW                                      | Continuing Education | Segal Consulting | Completed | 01/19/2021 | 01/19/2021      | 1.00  |
| <b>Description:</b> <i>by Paul Angelo and Todd Tauzer, Segal Consulting</i> |                      |                  |           |            |                 |       |

| Title                                  | Type                 | Institution                | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|----------------------------|-----------|------------|-----------------|-------|
| Private Equity Co-investment Education | Continuing Education | OCERS February I/C Meeting | Completed | 02/24/2021 | 02/24/2021      | 1.00  |
| <b>Description:</b>                    |                      |                            |           |            |                 |       |

| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-----------------------------------|-----------|------------|-----------------|-------|
| Annual Fiduciary Education                              | Continuing Education | OCERS April Regular Board Meeting | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman&#160; |                      |                                   |           |            |                 |       |

| Title                   | Type                 | Institution             | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------------------|-----------|------------|-----------------|-------|
| China Education Session | Continuing Education | OCERS I/C April Meeting | Completed | 04/21/2021 | 04/21/2021      | 1.00  |
| <b>Description:</b>     |                      |                         |           |            |                 |       |

| Title                        | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| SACRS Spring Conference 2021 | Continuing Education | SACRS       | Completed | 05/14/2021 | 05/14/2021      | 3.50  |
| <b>Description:</b>          |                      |             |           |            |                 |       |

| Title  | Type               | Institution | Status    | Due Date   | Completion Date | Hours |
|--|--------------------|-------------|-----------|------------|-----------------|-------|
| Sexual Harassment Prevention Training - SACRS Spring Conference 2021 | Mandatory Training | SACRS       | Completed | 05/14/2021 | 05/14/2021      | 2.00  |
| <b>Description:</b>  |                    |             |           |            |                 |       |

| Title               | Type | Institution | Status | Due Date | Completion Date | Hours |
|---------------------|------|-------------|--------|----------|-----------------|-------|
| <b>Description:</b> |      |             |        |          |                 |       |

Executed: 1/6/2022 9:06:36 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 1 of 2



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Freidenrich, Shari

Date Range: 1/1/2021 - 12/31/2022



|                                  |                      |  |           |            |            |      |
|----------------------------------|----------------------|--|-----------|------------|------------|------|
| 2021 Strategic Planning Workshop | Continuing Education |  | Completed | 09/09/2021 | 09/09/2021 | 3.25 |
|----------------------------------|----------------------|--|-----------|------------|------------|------|

**Description:** Investment and Non Investment Education Credit

| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS November Investment Meeting | Continuing Education | OCERS       | Completed | 11/17/2021 | 11/17/2021      | 1.00  |

**Description:** Blockchain and the Rise of Decentralization

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Infrastructure Overview | Continuing Education | OCERS       | Completed | 12/13/2021 | 12/13/2021      | 1.00  |

**Description:** Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak

| Title                          | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Global ARC Conference - Boston | Continuing Education | Global ARC  | Completed | 10/27/2021 | 10/27/2021      | 18.50 |

**Description:** Global ARC - Boston

Executed: 1/6/2022 9:06:36 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 2 of 2



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Hidalgo, Arthur

Date Range: 1/1/2020 - 12/31/2021



#### BOARD

**Hidalgo, Arthur (19 Records)** **Total Hours: 26.25**

| Title                                     | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-------------|-----------|------------|-----------------|-------|
| Ethics Training                           | Continuing Education | SACRS       | Completed | 05/23/2020 | 05/23/2020      | 2.00  |
| <b>Description:</b> SACRS Online Training |                      |             |           |            |                 |       |

| Title                                     | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-------------|-----------|------------|-----------------|-------|
| Sexual Harrassment Prevention Training    | Continuing Education | SACRS       | Completed | 07/15/2020 | 07/15/2020      | 2.00  |
| <b>Description:</b> SACRS online training |                      |             |           |            |                 |       |

| Title  | Type                 | Institution                | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|----------------------------|-----------|------------|-----------------|-------|
| CALAPRS Trustee Roundtable                     | Continuing Education | CALAPRS Trustee Roundtable | Completed | 10/23/2020 | 10/23/2020      | 2.50  |
| <b>Description:</b> CALAPRS Trustee Roundtable |                      |                            |           |            |                 |       |

| Title   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS Strategic Planning Workshop                     | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.50  |
| <b>Description:</b> OCERS Strategic Planning Workshop |                      |             |           |            |                 |       |

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| INVESTMENT MARKETS DISCUSSION  | Continuing Education | OCERS       | Completed | 06/24/2020 | 06/24/2020      | 1.00  |
| <b>Description:</b> OCERS Investment Committee Meeting - Discussion by Hamilton E. James, Blackstone |                      |             |           |            |                 |       |

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| THE AFTER CORONA WORLD   | Continuing Education | OCERS       | Completed | 07/29/2020 | 07/29/2020      | 1.00  |
| <b>Description:</b> OCERS Investment Committee Meeting - Presentation by Ruchir Sharma |                      |             |           |            |                 |       |

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| Strategic Planning Workshop - Cybersecurity Training | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.00  |

Executed: 1/5/2022 12:23:10 PM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 1 of 3



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Hidalgo, Arthur

Date Range: 1/1/2020 - 12/31/2021



| <b>Description:</b> Strategic Planning Workshop - Cybersecurity Training         |                      |                                   |           |            |                 |       |
|--|----------------------|-----------------------------------|-----------|------------|-----------------|-------|
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Co-Investment Education  | Continuing Education | OCERS                             | Completed | 12/14/2020 | 12/14/2020      | 1.00  |
| <b>Description:</b> OCERS Investment Committee Meeting                           |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| PENSION OBLIGATION BONDS – AN OVERVIEW   | Continuing Education | Segal Consulting                  | Completed | 01/19/2021 | 01/19/2021      | 1.00  |
| <b>Description:</b> by&#160;<i>Paul Angelo and Todd Tauzer, Segal Consulting</i> |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Private Equity Co-investment Education   | Continuing Education | OCERS February I/C Meeting        | Completed | 02/24/2021 | 02/24/2021      | 1.00  |
| <b>Description:</b>  |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Global Economic Outlook Discussion   | Continuing Education | OCERS March I/C Meeting           | Completed | 03/24/2021 | 03/24/2021      | 1.00  |
| <b>Description:</b><br>  |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Annual Fiduciary Education   | Continuing Education | OCERS April Regular Board Meeting | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman                                |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| China Education Session  | Continuing Education | OCERS I/C April Meeting           | Completed | 04/21/2021 | 04/21/2021      | 1.00  |
| <b>Description:</b>  |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| The Townsend Group View of the World   | Continuing Education | OCERS I/C May Meeting             | Completed | 05/26/2021 | 05/26/2021      | 1.00  |
| <b>Description:</b>  |                      |                                   |           |            |                 |       |

Executed: 1/5/2022 12:23:10 PM  
 Executed By: OCERS\ctorres



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Hidalgo, Arthur

Date Range: 1/1/2020 - 12/31/2021



| Title  | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|--|-----------|------------|-----------------|-------|
| 2021 Strategic Planning Workshop   | Continuing Education |  | Completed | 09/09/2021 | 09/09/2021      | 3.25  |
| <b>Description:</b> Investment and Non Investment Education Credit   |                      |  |           |            |                 |       |
| Title  | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| ASSET BASED LENDING OVERVIEW   | Continuing Education |  | Completed | 10/27/2021 | 10/27/2021      | 1.00  |
| <b>Description:</b> Investment Committee Meeting<br>Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI |                      |  |           |            |                 |       |
| Title  | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| OCERS November Investment Meeting  | Continuing Education | OCERS  | Completed | 11/17/2021 | 11/17/2021      | 1.00  |
| <b>Description:</b> Blockchain and the Rise of Decentralization  |                      |  |           |            |                 |       |
| Title  | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| Infrastructure Overview  | Continuing Education | OCERS  | Completed | 12/13/2021 | 12/13/2021      | 1.00  |
| <b>Description:</b> Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak  |                      |  |           |            |                 |       |
| Title  | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| Canterbury Consulting's 2021 Annual Investment Forum   | Continuing Education | Canterbury Consulting's 2021 Annual Investment Forum | Completed | 01/21/2021 | 01/21/2021      | 2.50  |
| <b>Description:</b> Meeting held via ZOOM  |                      |  |           |            |                 |       |

Executed: 1/5/2022 12:23:10 PM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 3 of 3



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Lindholm, Wayne

Date Range: 1/1/2020 - 12/31/2021



#### BOARD

|                                     |  |  |  |  |                     |              |
|-------------------------------------|--|--|--|--|---------------------|--------------|
| <b>Lindholm, Wayne (16 Records)</b> |  |  |  |  | <b>Total Hours:</b> | <b>25.75</b> |
|-------------------------------------|--|--|--|--|---------------------|--------------|

| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS Strategic Planning Workshop | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.50  |

**Description:** OCERS Strategic Planning Workshop

| Title                         | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| INVESTMENT MARKETS DISCUSSION | Continuing Education | OCERS       | Completed | 06/24/2020 | 06/24/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting - Discussion by Hamilton E. James, Blackstone

| Title                  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| THE AFTER CORONA WORLD | Continuing Education | OCERS       | Completed | 07/29/2020 | 07/29/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting - Presentation by Ruchir Sharma

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| Strategic Planning Workshop - Cybersecurity Training | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.00  |

**Description:** Strategic Planning Workshop - Cybersecurity Training

| Title           | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Opal Conference | Continuing Education | Opal        | Completed | 12/02/2020 | 12/02/2020      | 4.00  |

**Description:** Global Alternative Investment Outlook  
 Non-Correlated/Niche Alternative Fund Strategies  
 Foreclosure & Eviction Crisis  
 Global Private Equity & Venture Capital Market Outlook  
 Geopolitical Update & Interviews

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Co-Investment Education | Continuing Education | OCERS       | Completed | 12/14/2020 | 12/14/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting

Executed: 1/5/2022 9:41:10 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 1 of 3





### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Lindholm, Wayne

Date Range: 1/1/2020 - 12/31/2021



| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-----------------------------------|-----------|------------|-----------------|-------|
| PENSION OBLIGATION BONDS – AN OVERVIEW   | Continuing Education | Segal Consulting                  | Completed | 01/19/2021 | 01/19/2021      | 1.00  |
| <b>Description:</b> <i>by Paul Angelo and Todd Tauzer, Segal Consulting</i>  |                      |                                   |           |            |                 |       |
| Global Economic Outlook Discussion   | Continuing Education | OCERS March I/C Meeting           | Completed | 03/24/2021 | 03/24/2021      | 1.00  |
| <b>Description:</b><br>  |                      |                                   |           |            |                 |       |
| Annual Fiduciary Education   | Continuing Education | OCERS April Regular Board Meeting | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman&#160;  |                      |                                   |           |            |                 |       |
| The Townsend Group View of the World   | Continuing Education | OCERS I/C May Meeting             | Completed | 05/26/2021 | 05/26/2021      | 1.00  |
| <b>Description:</b>  |                      |                                   |           |            |                 |       |
| 2021 Strategic Planning Workshop   | Continuing Education |                                   | Completed | 09/09/2021 | 09/09/2021      | 3.25  |
| <b>Description:</b> Investment and Non Investment Education Credit   |                      |                                   |           |            |                 |       |
| ASSET BASED LENDING OVERVIEW   | Continuing Education |                                   | Completed | 10/27/2021 | 10/27/2021      | 1.00  |
| <b>Description:</b> Investment committee meeting<br>Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI |                      |                                   |           |            |                 |       |
| OCERS November Investment Meeting  | Continuing Education | OCERS                             | Completed | 11/17/2021 | 11/17/2021      | 1.00  |

Executed: 1/5/2022 9:41:10 AM  
 Executed By: OCERS\ctorres



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Lindholm, Wayne

Date Range: 1/1/2020 - 12/31/2021



**Description:** Blockchain and the Rise of Decentralization

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Infrastructure Overview | Continuing Education | OCERS       | Completed | 12/13/2021 | 12/13/2021      | 1.00  |

**Description:** Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak

| Title                                       | Type                 | Institution          | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|----------------------|-----------|------------|-----------------|-------|
| The Alternative Investing Summit Conference | Continuing Education | Opal Financial Group | Completed | 12/09/2021 | 12/09/2021      | 4.50  |

**Description:** The Alternative Investing Summit will bring together trustees and representatives of institutions as well as money managers and consultants to explore the roles of alternative opportunities and strategies.

| Title   | Type               | Institution                     | Status    | Due Date   | Completion Date | Hours |
|---|--------------------|---------------------------------|-----------|------------|-----------------|-------|
| Not Your Average Harrassment Prevention for Supervisor Training | Mandatory Training | Burke, Williams & Sorensen, LLP | Completed | 12/14/2021 | 12/14/2021      | 2.00  |

**Description:**



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Oates, Richard

Date Range: 7/1/2021 - 1/5/2022



#### BOARD

**Oates, Richard (8 Records)** **Total Hours: 44.25**

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| 2021 Strategic Planning Workshop                                   | Continuing Education |             | Completed | 09/09/2021 | 09/09/2021      | 3.25  |
| <b>Description:</b> Investment and Non Investment Education Credit |                      |             |           |            |                 |       |

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| CALAPRS Principles of Pension Governance for Trustees 2021 | Continuing Education | CALAPRS     | Completed | 09/30/2021 | 09/30/2021      | 9.00  |
| <b>Description:</b> 9/28/21-9/30-21                        |                      |             |           |            |                 |       |

| Title                  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| NCPERS Fall Conference | Continuing Education | NCPERS      | Completed | 09/28/2021 | 09/28/2021      | 8.00  |
| <b>Description:</b>    |                      |             |           |            |                 |       |

| Title   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-------------|-----------|------------|-----------------|-------|
| ASSET BASED LENDING OVERVIEW  | Continuing Education |             | Completed | 10/27/2021 | 10/27/2021      | 1.00  |
| <b>Description:</b> Investment Committee Meeting Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI |                      |             |           |            |                 |       |

| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|--|-----------|------------|-----------------|-------|
| SACRS Fall Conference   | Continuing Education | State Association of County Retirement Systems (SACRS) | Completed | 11/09/2021 | 11/11/2021      | 19.00 |
| <b>Description:</b> SACRS Fall Conference provided education and insight to those entrusted with managing the funds of these plans. |                      |  |           |            |                 |       |

| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|--|-----------|------------|-----------------|-------|
| SACRS / SEXUAL HARASSMENT PREVENTION TRAINING             | Continuing Education | State Association of County Retirement Systems (SACRS) | Completed | 11/09/2021 | 11/09/2021      | 2.00  |
| <b>Description:</b> SEXUAL HARASSMENT PREVENTION TRAINING |                      |  |           |            |                 |       |

| Title | Type | Institution | Status | Due Date | Completion Date | Hours |
|-------|------|-------------|--------|----------|-----------------|-------|
|-------|------|-------------|--------|----------|-----------------|-------|

Executed: 1/5/2022 9:39:29 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 1 of 2



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Oates, Richard

Date Range: 7/1/2021 - 1/5/2022



| OCERS November Investment Meeting   | Continuing Education | OCERS       | Completed | 11/17/2021 | 11/17/2021      | 1.00  |
|---|----------------------|-------------|-----------|------------|-----------------|-------|
| <b>Description:</b> Blockchain and the Rise of Decentralization                           |                      |             |           |            |                 |       |
| Title   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
| Infrastructure Overview   | Continuing Education | OCERS       | Completed | 12/13/2021 | 12/13/2021      | 1.00  |
| <b>Description:</b> Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak |                      |             |           |            |                 |       |

Executed: 1/5/2022 9:39:29 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 2 of 2



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Packard, Charles

Date Range: 1/1/2020 - 12/31/2021



#### BOARD

**Packard, Charles (20 Records)** **Total Hours: 42.25**

| Title                                  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| Sexual Harrassment Prevention Training | Continuing Education | SACRS       | Completed | 07/15/2020 | 07/15/2020      | 2.00  |

**Description:** SACRS online training

| Title           | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Ethics Training | Continuing Education | SACRS       | Completed | 05/23/2020 | 05/23/2020      | 2.00  |

**Description:** SACRS online training

| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS Strategic Planning Workshop | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.50  |

**Description:** OCERS Strategic Planning Workshop

| Title                         | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| INVESTMENT MARKETS DISCUSSION | Continuing Education | OCERS       | Completed | 06/24/2020 | 06/24/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting - Discussion by Hamilton E. James, Blackstone

| Title                  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| THE AFTER CORONA WORLD | Continuing Education | OCERS       | Completed | 07/29/2020 | 07/29/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting - Presentation by Ruchir Sharma

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| Strategic Planning Workshop - Cybersecurity Training | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.00  |

**Description:** Strategic Planning Workshop - Cybersecurity Training

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Co-Investment Education | Continuing Education | OCERS       | Completed | 12/14/2020 | 12/14/2020      | 1.00  |

Executed: 1/5/2022 9:42:14 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 1 of 3



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Packard, Charles

Date Range: 1/1/2020 - 12/31/2021



| <b>Description:</b> OCERS Investment Committee Meeting                      |                      |   |           |            |                 |       |
|---|----------------------|---|-----------|------------|-----------------|-------|
| Title   | Type                 | Institution   | Status    | Due Date   | Completion Date | Hours |
| PENSION OBLIGATION BONDS – AN OVERVIEW                                      | Continuing Education | Segal Consulting                                    | Completed | 01/19/2021 | 01/19/2021      | 1.00  |
| <b>Description:</b> <i>by Paul Angelo and Todd Tauzer, Segal Consulting</i> |                      |   |           |            |                 |       |
| Title   | Type                 | Institution   | Status    | Due Date   | Completion Date | Hours |
| NCPERS Fall Conference  | Continuing Education | NCPERS  | Completed | 02/03/2021 | 02/03/2021      | 9.00  |
| <b>Description:</b>   |                      |   |           |            |                 |       |
| Title   | Type                 | Institution   | Status    | Due Date   | Completion Date | Hours |
| Private Equity Co-investment Education                                      | Continuing Education | OCERS February I/C Meeting                          | Completed | 02/24/2021 | 02/24/2021      | 1.00  |
| <b>Description:</b>   |                      |   |           |            |                 |       |
| Title   | Type                 | Institution   | Status    | Due Date   | Completion Date | Hours |
| CALAPRS Virtual General Assembly  | Continuing Education | CALAPRS   | Completed | 03/09/2021 | 03/09/2021      | 10.00 |
| <b>Description:</b>   |                      |   |           |            |                 |       |
| Title   | Type                 | Institution   | Status    | Due Date   | Completion Date | Hours |
| CALAPRS Ethics Training   | Mandatory Training   | CALAPRS - Ethics Training provided by Nossaman, LLP | Completed | 03/08/2021 | 03/08/2021      | 2.00  |
| <b>Description:</b><br>   |                      |   |           |            |                 |       |
| Title   | Type                 | Institution   | Status    | Due Date   | Completion Date | Hours |
| Global Economic Outlook Discussion  | Continuing Education | OCERS March I/C Meeting                             | Completed | 03/24/2021 | 03/24/2021      | 1.00  |
| <b>Description:</b><br>   |                      |   |           |            |                 |       |
| Title   | Type                 | Institution   | Status    | Due Date   | Completion Date | Hours |
| Annual Fiduciary Education  | Continuing Education | OCERS April Regular Board Meeting                   | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman                           |                      |   |           |            |                 |       |

Executed: 1/5/2022 9:42:14 AM  
 Executed By: OCERS\ctorres



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Packard, Charles

Date Range: 1/1/2020 - 12/31/2021



| Title  | Type                 | Institution             | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------------------|-----------|------------|-----------------|-------|
| China Education Session  | Continuing Education | OCERS I/C April Meeting | Completed | 04/21/2021 | 04/21/2021      | 1.00  |
| <b>Description:</b>  |                      |                         |           |            |                 |       |
| The Townsend Group View of the World   | Continuing Education | OCERS I/C May Meeting   | Completed | 05/26/2021 | 05/26/2021      | 1.00  |
| <b>Description:</b>  |                      |                         |           |            |                 |       |
| 2021 Strategic Planning Workshop   | Continuing Education |                         | Completed | 09/09/2021 | 09/09/2021      | 3.25  |
| <b>Description:</b> Investment and Non Investment Education Credit   |                      |                         |           |            |                 |       |
| ASSET BASED LENDING OVERVIEW   | Continuing Education |                         | Completed | 10/27/2021 | 10/27/2021      | 1.00  |
| <b>Description:</b> Investment Committee Meeting<br>Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI |                      |                         |           |            |                 |       |
| OCERS November Investment Meeting  | Continuing Education | OCERS                   | Completed | 11/17/2021 | 11/17/2021      | 1.00  |
| <b>Description:</b> Blockchain and the Rise of Decentralization  |                      |                         |           |            |                 |       |
| Infrastructure Overview  | Continuing Education | OCERS                   | Completed | 12/13/2021 | 12/13/2021      | 1.00  |
| <b>Description:</b> Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak  |                      |                         |           |            |                 |       |

Executed: 1/5/2022 9:42:14 AM  
 Executed By: OCERS\ctorres



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Prevatt, Chris

Date Range: 1/1/2020 - 12/31/2021



#### BOARD

**Prevatt, Chris (24 Records)** **Total Hours: 96.60**

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| NASRA Annual Conference | Continuing Education | NASRA       | Completed | 08/12/2020 | 08/12/2020      | 13.50 |

**Description:** NASRA Annual Conference - August 5-12, 2020

| Title                              | Type                 | Institution    | Status    | Due Date   | Completion Date | Hours |
|------------------------------------|----------------------|----------------|-----------|------------|-----------------|-------|
| Pension Bridge Annual Meeting 2020 | Continuing Education | Pension Bridge | Completed | 08/28/2020 | 08/28/2020      | 17.10 |

**Description:** Pension Bridge Annual Meeting 2020 - Online

| Title                      | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|----------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| SACRS Fall Conference 2020 | Continuing Education | SACRS       | Completed | 11/13/2020 | 11/13/2020      | 9.00  |

**Description:** SACRS Fall Conference 2020

| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS Strategic Planning Workshop | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.50  |

**Description:** OCERS Strategic Planning Workshop

| Title                         | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| INVESTMENT MARKETS DISCUSSION | Continuing Education | OCERS       | Completed | 06/24/2020 | 06/24/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting - Discussion by Hamilton E. James, Blackstone

| Title                  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| THE AFTER CORONA WORLD | Continuing Education | OCERS       | Completed | 07/29/2020 | 07/29/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting - Presentation by Ruchir Sharma

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| Strategic Planning Workshop - Cybersecurity Training | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.00  |

Executed: 1/5/2022 9:43:06 AM  
 Executed By: OCERS\ctorres

**Doc. No. 0060-1480-R0001**  
 Page 1 of 4





### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Prevatt, Chris

Date Range: 1/1/2020 - 12/31/2021



| <b>Description:</b> Strategic Planning Workshop - Cybersecurity Training    |                      |                                   |           |            |                 |       |
|---|----------------------|-----------------------------------|-----------|------------|-----------------|-------|
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Co-Investment Education   | Continuing Education | OCERS                             | Completed | 12/14/2020 | 12/14/2020      | 1.00  |
| <b>Description:</b> OCERS Investment Committee Meeting                      |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| PENSION OBLIGATION BONDS – AN OVERVIEW                                      | Continuing Education | Segal Consulting                  | Completed | 01/19/2021 | 01/19/2021      | 1.00  |
| <b>Description:</b> <i>by Paul Angelo and Todd Tauzer, Segal Consulting</i> |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Private Equity Co-investment Education                                      | Continuing Education | OCERS February I/C Meeting        | Completed | 02/24/2021 | 02/24/2021      | 1.00  |
| <b>Description:</b>   |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| NASRA Winter Conference   | Continuing Education | NASRA                             | Completed | 02/24/2021 | 02/24/2021      | 4.00  |
| <b>Description:</b>   |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Global Economic Outlook Discussion  | Continuing Education | OCERS March I/C Meeting           | Completed | 03/24/2021 | 03/24/2021      | 1.00  |
| <b>Description:</b><br>   |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Annual Fiduciary Education  | Continuing Education | OCERS April Regular Board Meeting | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman&#160;                     |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| China Education Session   | Continuing Education | OCERS I/C April Meeting           | Completed | 04/21/2021 | 04/21/2021      | 1.00  |
| <b>Description:</b>   |                      |                                   |           |            |                 |       |

Executed: 1/5/2022 9:43:06 AM  
 Executed By: OCERS\ctorres



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board  
Date Range: 1/1/2020 - 12/31/2021

Employee: Prevatt, Chris



| Title  | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-----------------------|-----------|------------|-----------------|-------|
| SACRS Spring Conference 2021   | Continuing Education | SACRS                 | Completed | 05/14/2021 | 05/14/2021      | 9.00  |
| <b>Description:</b>  |                      |                       |           |            |                 |       |
| Title  | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
| Sexual Harassment Prevention Training - SACRS Spring Conference 2021   | Mandatory Training   | SACRS                 | Completed | 05/14/2021 | 05/14/2021      | 2.00  |
| <b>Description:</b>  |                      |                       |           |            |                 |       |
| Title  | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
| Ethics Training - SACRS Spring Conference 2021   | Mandatory Training   | SACRS                 | Completed | 05/14/2021 | 05/14/2021      | 2.00  |
| <b>Description:</b>  |                      |                       |           |            |                 |       |
| Title  | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
| The Townsend Group View of the World   | Continuing Education | OCERS I/C May Meeting | Completed | 05/26/2021 | 05/26/2021      | 1.00  |
| <b>Description:</b>  |                      |                       |           |            |                 |       |
| Title  | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
| 2021 Strategic Planning Workshop   | Continuing Education |                       | Completed | 09/09/2021 | 09/09/2021      | 3.25  |
| <b>Description:</b> Investment and Non Investment Education Credit   |                      |                       |           |            |                 |       |
| Title  | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
| NASRA Annual Conference  | Continuing Education | NASRA                 | Completed | 08/04/2021 | 08/04/2021      | 12.50 |
| <b>Description:</b>  |                      |                       |           |            |                 |       |
| Title  | Type                 | Institution           | Status    | Due Date   | Completion Date | Hours |
| ASSET BASED LENDING OVERVIEW   | Continuing Education |                       | Completed | 10/27/2021 | 10/27/2021      | 1.00  |
| <b>Description:</b> Investment Committee Meeting<br>Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI |                      |                       |           |            |                 |       |

Executed: 1/5/2022 9:43:06 AM  
Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
Page 3 of 4



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Prevatt, Chris

Date Range: 1/1/2020 - 12/31/2021



| Title                 | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
|-----------------------|----------------------|--|-----------|------------|-----------------|-------|
| SACRS Fall Conference | Continuing Education | State Association of County Retirement Systems (SACRS) | Completed | 11/09/2021 | 11/11/2021      | 10.25 |

**Description:** SACRS Fall Conference provided education and insight to those entrusted with managing the funds of these plans.

| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS November Investment Meeting | Continuing Education | OCERS       | Completed | 11/17/2021 | 11/17/2021      | 1.00  |

**Description:** Blockchain and the Rise of Decentralization

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Infrastructure Overview | Continuing Education | OCERS       | Completed | 12/13/2021 | 12/13/2021      | 1.00  |

**Description:** Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak

Executed: 1/5/2022 9:43:06 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 4 of 4



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Tagaloa, Adele

Date Range: 1/1/2020 - 12/31/2021



#### BOARD

**Tagaloa, Adele (38 Records)** **Total Hours: 190.75**

| Title  | Type                 | Institution    | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|----------------|-----------|------------|-----------------|-------|
| 2020 Pension Bridge Annual - Complimentary Webinar | Improvement Training | Pension Bridge | Completed | 04/15/2020 | 04/15/2020      | 3.00  |

**Description:** 2020 Pension Bridge Annual - Complimentary Webinar

| Title                                 | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---------------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Sexual Harassment Prevention Training | Continuing Education | SACRS       | Completed | 07/15/2020 | 07/15/2020      | 2.00  |

**Description:** SACRS Online Training

| Title                          | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Litigation 101 & Current Cases | Continuing Education | SACRS       | Completed | 05/22/2020 | 05/22/2020      | 1.50  |

**Description:** SACRS online training

| Title   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-------------|-----------|------------|-----------------|-------|
| Has the Coronavirus Pandemic Changed the Outlook for ESG Investing? | Continuing Education | SACRS       | Completed | 05/19/2020 | 05/19/2020      | 1.50  |

**Description:** SACRS online training

| Title   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-------------|-----------|------------|-----------------|-------|
| The Case for Investing with Small and Emerging Managers | Continuing Education | SACRS       | Completed | 05/21/2020 | 05/21/2020      | 1.50  |

**Description:** SACRS online training

| Title   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---|----------------------|-------------|-----------|------------|-----------------|-------|
| Private Market Investing in a Late-Cycle Market or Private Market Investing in the 8th Inning | Continuing Education | SACRS       | Completed | 05/20/2020 | 05/20/2020      | 1.50  |

**Description:** SACRS online training

Executed: 1/7/2022 8:24:56 AM  
 Executed By: OCERS\ctorres

**Doc. No. 0060-1480-R0001**  
 Page 1 of 6



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Tagalao, Adele

Date Range: 1/1/2020 - 12/31/2021



| Title  | Type                 | Institution              | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|--------------------------|-----------|------------|-----------------|-------|
| Cash Flows & Investment Management in the Time of COVID-19   | Continuing Education | SACRS                    | Completed | 05/15/2020 | 05/15/2020      | 1.50  |
| <b>Description:</b> SACRS online training  |                      |                          |           |            |                 |       |
| Private Markets Today Vs. The Global Financial Crisis  | Continuing Education | SACRS                    | Completed | 05/14/2020 | 05/14/2020      | 1.50  |
| <b>Description:</b> SACRS online training  |                      |                          |           |            |                 |       |
| SACRS/UC Berkeley 2020 Program   | Continuing Education | SACRS                    | Completed | 08/13/2020 | 08/13/2020      | 18.00 |
| <b>Description:</b> SACRS/UC Berkeley 2020 Program concluding on 8/13/2020 at the Webinar  |                      |                          |           |            |                 |       |
| CALAPRS General Assembly   | Continuing Education | CALAPRS General Assembly | Completed | 03/10/2020 | 03/10/2020      | 17.00 |
| <b>Description:</b> CALAPRS General Assembly   |                      |                          |           |            |                 |       |
| CALAPRS Principles for Trustees 2020 Virtual Program   | Continuing Education | CALAPRS                  | Completed | 08/18/2020 | 08/18/2020      | 6.50  |
| <b>Description:</b> CALAPRS Principles for Trustees 2020 Virtual Program<br>Principles of Pension Governance for Trustees SESSION I&#58; Fiduciary Duty and Sound Decision Making and SESSION II&#58; Investment Policy Basics & Overseeing the Investment Program |                      |                          |           |            |                 |       |
| Ethics Training  | Mandatory Training   | CALAPRS                  | Completed | 03/08/2020 | 03/08/2020      | 2.00  |
| <b>Description:</b> CALAPRS General Assembly 2020  |                      |                          |           |            |                 |       |
| SACRS Fall Conference 2020   | Continuing Education | SACRS                    | Completed | 11/13/2020 | 11/13/2020      | 8.00  |
| <b>Description:</b> SACRS FALL Conference 2020   |                      |                          |           |            |                 |       |

Executed: 1/7/2022 8:24:56 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 2 of 6



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Tagaloa, Adele

Date Range: 1/1/2020 - 12/31/2021



| Title  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|------------------|-----------|------------|-----------------|-------|
| OCERS Strategic Planning Workshop  | Continuing Education | OCERS            | Completed | 09/10/2020 | 09/10/2020      | 1.50  |
| <b>Description:</b> OCERS Strategic Planning Workshop  |                      |                  |           |            |                 |       |
| Title  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
| INVESTMENT MARKETS DISCUSSION  | Continuing Education | OCERS            | Completed | 06/24/2020 | 06/24/2020      | 1.00  |
| <b>Description:</b> OCERS Investment Committee Meeting - Discussion by Hamilton E. James, Blackstone |                      |                  |           |            |                 |       |
| Title  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
| Strategic Planning Workshop - Cybersecurity Training   | Continuing Education | OCERS            | Completed | 09/10/2020 | 09/10/2020      | 1.00  |
| <b>Description:</b> Strategic Planning Workshop - Cybersecurity Training                             |                      |                  |           |            |                 |       |
| Title  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
| THE AFTER CORONA WORLD   | Continuing Education | OCERS            | Completed | 07/29/2020 | 07/29/2020      | 1.00  |
| <b>Description:</b> OCERS Investment Committee Meeting - Presentation by Ruchir Sharma               |                      |                  |           |            |                 |       |
| Title  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
| Co-Investment Education  | Continuing Education | OCERS            | Completed | 12/14/2020 | 12/14/2020      | 1.00  |
| <b>Description:</b> OCERS Investment Committee Meeting   |                      |                  |           |            |                 |       |
| Title  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
| PENSION OBLIGATION BONDS – AN OVERVIEW   | Continuing Education | Segal Consulting | Completed | 01/19/2021 | 01/19/2021      | 1.00  |
| <b>Description:</b> <i>by Paul Angelo and Todd Tauzer, Segal Consulting</i>                          |                      |                  |           |            |                 |       |
| Title  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
| NCPERS Fall Conference   | Continuing Education | NCPERS           | Completed | 02/03/2021 | 02/03/2021      | 9.00  |
| <b>Description:</b>  |                      |                  |           |            |                 |       |
| Title  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |

Executed: 1/7/2022 8:24:56 AM  
 Executed By: OCERS\ctorres



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Tagalao, Adele

Date Range: 1/1/2020 - 12/31/2021



| Private Equity Co-investment Education            | Continuing Education | OCERS February I/C Meeting        | Completed | 02/24/2021 | 02/24/2021      | 1.00  |
|---|----------------------|-----------------------------------|-----------|------------|-----------------|-------|
| <b>Description:</b>                               |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| CALAPRS Virtual General Assembly                  | Continuing Education | CALAPRS                           | Completed | 03/09/2021 | 03/09/2021      | 6.00  |
| <b>Description:</b>                               |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Global Economic Outlook Discussion                | Continuing Education | OCERS March I/C Meeting           | Completed | 03/24/2021 | 03/24/2021      | 1.00  |
| <b>Description:</b><br>                           |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Annual Fiduciary Education                        | Continuing Education | OCERS April Regular Board Meeting | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| China Education Session                           | Continuing Education | OCERS I/C April Meeting           | Completed | 04/21/2021 | 04/21/2021      | 1.00  |
| <b>Description:</b>                               |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| CALAPRS Trustee Roundtable                        | Continuing Education | CALAPRS                           | Completed | 05/10/2021 | 05/10/2021      | 4.50  |
| <b>Description:</b>                               |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| SACRS Spring Conference 2021                      | Continuing Education | SACRS                             | Completed | 05/14/2021 | 05/14/2021      | 10.00 |
| <b>Description:</b>                               |                      |                                   |           |            |                 |       |
| Title   | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| The Townsend Group View of the World              | Continuing Education | OCERS I/C May Meeting             | Completed | 05/26/2021 | 05/26/2021      | 1.00  |

Executed: 1/7/2022 8:24:56 AM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 4 of 6



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board  
Date Range: 1/1/2020 - 12/31/2021

Employee: Tagaloa, Adele



| Description:  |                      |  |           |            |                 |       |
|---|----------------------|--|-----------|------------|-----------------|-------|
| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| 2021 Strategic Planning Workshop  | Continuing Education |  | Completed | 09/09/2021 | 09/09/2021      | 3.25  |
| Description: Investment and Non Investment Education Credit   |                      |  |           |            |                 |       |
| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| CALAPRS Principles of Pension Governance for Trustees 2021  | Continuing Education | CALAPRS  | Completed | 09/30/2021 | 09/30/2021      | 12.50 |
| Description:  |                      |  |           |            |                 |       |
| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| NASRA Annual Conference   | Continuing Education | NASRA  | Completed | 08/11/2021 | 08/11/2021      | 12.50 |
| Description:  |                      |  |           |            |                 |       |
| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| NCPERS Forum  | Continuing Education | NCPERS   | Completed | 08/25/2021 | 08/25/2021      | 9.00  |
| Description:  |                      |  |           |            |                 |       |
| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| ASSET BASED LENDING OVERVIEW  | Continuing Education |  | Completed | 10/27/2021 | 10/27/2021      | 1.00  |
| Description: Investment Committee Meeting<br>Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI |                      |  |           |            |                 |       |
| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| CALAPRS Virtual Trustees Round Table  | Continuing Education |  | Completed | 10/29/2021 | 10/29/2021      | 3.00  |
| Description: CALAPRS Virtual Trustees Round Table   |                      |  |           |            |                 |       |
| Title   | Type                 | Institution  | Status    | Due Date   | Completion Date | Hours |
| SACRS Fall Conference   | Continuing Education | State Association of County Retirement Systems (SACRS) | Completed | 11/09/2021 | 11/11/2021      | 17.50 |

Executed: 1/7/2022 8:24:56 AM  
Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
Page 5 of 6





### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Tagaloa, Adele

Date Range: 1/1/2020 - 12/31/2021



**Description:** SACRS Fall Conference provided education and insight to those entrusted with managing the funds of these plans.

| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS November Investment Meeting | Continuing Education | OCERS       | Completed | 11/17/2021 | 11/17/2021      | 1.00  |

**Description:** Blockchain and the Rise of Decentralization

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Infrastructure Overview | Continuing Education | OCERS       | Completed | 12/13/2021 | 12/13/2021      | 1.00  |

**Description:** Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak

| Title               | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|---------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| ARC Global - Boston | Continuing Education | Global ARC  | Completed | 10/27/2021 | 10/27/2021      | 24.00 |

**Description:** ARC Global - Boston



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Vallone, Jeremy

Date Range: 1/1/2020 - 12/31/2021



#### BOARD

**Vallone, Jeremy (18 Records)** **Total Hours: 24.25**

| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS Strategic Planning Workshop | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.50  |

**Description:** OCERS Strategic Planning Workshop

| Title                  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| THE AFTER CORONA WORLD | Continuing Education | OCERS       | Completed | 07/29/2020 | 07/29/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting - Presentation by Ruchir Sharma

| Title  | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|-------------|-----------|------------|-----------------|-------|
| Strategic Planning Workshop - Cybersecurity Training | Continuing Education | OCERS       | Completed | 09/10/2020 | 09/10/2020      | 1.00  |

**Description:** Strategic Planning Workshop - Cybersecurity Training

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Co-Investment Education | Continuing Education | OCERS       | Completed | 12/14/2020 | 12/14/2020      | 1.00  |

**Description:** OCERS Investment Committee Meeting

| Title                                  | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|------------------|-----------|------------|-----------------|-------|
| PENSION OBLIGATION BONDS – AN OVERVIEW | Continuing Education | Segal Consulting | Completed | 01/19/2021 | 01/19/2021      | 1.00  |

**Description:** <i>by Paul Angelo and Todd Tauzer, Segal Consulting</i>

| Title                                  | Type                 | Institution                | Status    | Due Date   | Completion Date | Hours |
|--|----------------------|----------------------------|-----------|------------|-----------------|-------|
| Private Equity Co-investment Education | Continuing Education | OCERS February I/C Meeting | Completed | 02/24/2021 | 02/24/2021      | 1.00  |

**Description:**

| Title | Type | Institution | Status | Due Date | Completion Date | Hours |
|-------|------|-------------|--------|----------|-----------------|-------|
|-------|------|-------------|--------|----------|-----------------|-------|



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Vallone, Jeremy

Date Range: 1/1/2020 - 12/31/2021



| Global Economic Outlook Discussion                                   | Continuing Education | OCERS March I/C Meeting           | Completed | 03/24/2021 | 03/24/2021      | 1.00  |
|--|----------------------|-----------------------------------|-----------|------------|-----------------|-------|
| <b>Description:</b><br>  |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Annual Fiduciary Education   | Continuing Education | OCERS April Regular Board Meeting | Completed | 04/19/2021 | 04/19/2021      | 0.50  |
| <b>Description:</b> Presented by Harvey Leiderman                    |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| China Education Session  | Continuing Education | OCERS I/C April Meeting           | Completed | 04/21/2021 | 04/21/2021      | 1.00  |
| <b>Description:</b>  |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Sexual Harassment Prevention Training - SACRS Spring Conference 2021 | Mandatory Training   | SACRS                             | Completed | 05/14/2021 | 05/14/2021      | 2.00  |
| <b>Description:</b>  |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| Ethics Training - SACRS Spring Conference 2021                       | Mandatory Training   | SACRS                             | Completed | 05/14/2021 | 05/14/2021      | 2.00  |
| <b>Description:</b>  |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| SACRS Spring Conference 2021   | Continuing Education | SACRS                             | Completed | 05/14/2021 | 05/14/2021      | 2.00  |
| <b>Description:</b>  |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| 2021 Strategic Planning Workshop                                     | Continuing Education |                                   | Completed | 09/09/2021 | 09/09/2021      | 3.25  |
| <b>Description:</b> Investment and Non Investment Education Credit   |                      |                                   |           |            |                 |       |
| Title  | Type                 | Institution                       | Status    | Due Date   | Completion Date | Hours |
| ASSET BASED LENDING OVERVIEW   | Continuing Education |                                   | Completed | 10/27/2021 | 10/27/2021      | 1.00  |

Executed: 1/10/2022 9:23:54 PM  
 Executed By: OCERS\ctorres

Doc. No. 0060-1480-R0001  
 Page 2 of 3



### Career Development Report

This report details an individual's Training records in regards to their Career Development.

Department: Board

Employee: Vallone, Jeremy

Date Range: 1/1/2020 - 12/31/2021



**Description:** Oct Investment Committee Meeting - Presentation by Michael Chandra, CFA, CAIA; Kyle McCarthy, CFA; & Kristofer R. Kraus, PI

| Title                             | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-----------------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| OCERS November Investment Meeting | Continuing Education | OCERS       | Completed | 11/17/2021 | 11/17/2021      | 1.00  |

**Description:** Blockchain and the Rise of Decentralization

| Title                   | Type                 | Institution | Status    | Due Date   | Completion Date | Hours |
|-------------------------|----------------------|-------------|-----------|------------|-----------------|-------|
| Infrastructure Overview | Continuing Education | OCERS       | Completed | 12/13/2021 | 12/13/2021      | 1.00  |

**Description:** Presentation by Michael Dorrell, Chairman, CEO, Co-Founder, Stonepeak

| Title               | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
|---------------------|----------------------|------------------|-----------|------------|-----------------|-------|
| EMS HIPPA Awareness | Continuing Education | Target Solutions | Completed | 12/19/2020 | 12/19/2020      | 1.00  |

**Description:**

| Title                       | Type                 | Institution      | Status    | Due Date   | Completion Date | Hours |
|-----------------------------|----------------------|------------------|-----------|------------|-----------------|-------|
| CA Anti-Harassment Training | Continuing Education | Vector Solutions | Completed | 07/06/2021 | 07/06/2021      | 2.00  |

**Description:**



## Memorandum

---

**DATE:** December 29, 2021  
**TO:** Members of the Board of Retirement  
**FROM:** Frank Eley, OCERS Board Chair (2022)  
**SUBJECT:** 2022 OCERS BOARD COMMITTEE ASSIGNMENTS

---

### Written Report

I would like to thank my fellow OCERS Board Trustees for their input regarding committee assignments in 2022. I appreciate your flexibility and willingness to serve where needed:

In determining assignments, I had a number of goals to guide me:

- To fulfill each Board member's stated committee preference(s) where possible
- To have each Board member assigned to at least one committee
- To continue the practice of appointing a Vice Chair for all committees (should the Chair be absent)
- To continue the practice of alternating elected and appointed members as the committee's Chairs and Vice-Chairs.

The 2022 OCERS Board of Retirement committee assignments are as follows:

**INVESTMENTS** [Liaison – Molly Murphy]  
Mr. Hidalgo - Chair  
Ms. Tagaloa - Vice Chair  
All other Trustees of the OCERS Board serve as members of the Investment Committee

**AUDIT** [Liaison – David Kim]  
Mr. Eley - Chair  
Ms. Freidenrich - Vice Chair  
Mr. Packard  
Mr. Oates

**BUILDING** [Liaison – Brenda Shott]  
Mr. Lindholm - Chair  
Mr. Prevatt - Vice Chair  
Mr. Packard  
Mr. Eley

**DISABILITY** [Liaison – Suzanne Jenike]  
Ms. Tagaloa - Chair  
Mr. Packard – Vice Chair  
Mr. Vallone

[Please note: Mr. Packard has kindly consented to serve on the Disability Committee as an Appointed Member representative through June 30, 2022. At a future date options for appointed member service on the Disability Committee in the second half of the year will be determined.]

**GOVERNANCE** [Liaison – Gina Ratto]  
Mr. Hidalgo - Chair  
Mr. Oates - Vice Chair  
Ms. Freidenrich  
Ms. Tagaloa

**PERSONNEL** [Liaison – Cynthia Hockless]  
Mr. Prevatt - Chair  
Mr. Packard - Vice Chair  
Mr. Oates  
Mr. Dewane

My thanks to each of you individually and best wishes to the OCERS Board of Retirement as a whole for a successful 2022.

**Submitted by:**



**FE - Approved**

---

Frank Eley  
OCERS Board Chair (2022)



## Memorandum

**DATE:** January 18, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Jim Doezie, Contracts, Risk and Performance Administrator  
**SUBJECT:** CONTRACT STATUS FOR NAMED SERVICE PROVIDERS

### Written Report

#### Background/Discussion

##### 1. Performance Reviews

The following policy provisions stipulate the terms by which vendor performance reviews will be conducted:

- The Procurement & Contracting Policy (Section II.D.) specifies that vendors will be reviewed every three years. *“The performance of Named Service Providers and Contractors with Contract Values that exceed \$100,000 will be reviewed at least every three years. In addition, at least six months before the expiration of the initial term of a contract with a Named Service Provider and Contract Value over \$100,000, the continued appropriateness and cost-effectiveness of the Contractor will be assessed.”*
- The Board of Retirement Charter (Item #21) states that an Actuarial Review is needed every five (5) years. (With coordination by the Internal Audit department.)

##### 2. Pursuant to OCERS policy and charter provisions, the schedules below references the Named Service Provider contracts that are up for renewal, expiration, review, or RFP:

| Named Service Provider            | Vendor             | Contract Start | Contract Expiration | Last Review Date | Next Review Date | RFP start | Responsible Senior Exec | Notes  |
|-----------------------------------|--------------------|----------------|---------------------|------------------|------------------|-----------|-------------------------|--|
| Actuarial Auditor (Every 5 years) | Cheiron            | 8/1/2017       | 12/31/2017          | 12/31/2017       | N/A              | Feb-2022  | Delaney/Kim             | Reviewed 2017. Report received January, 2018                 |
| Consulting Actuary                | Segal              | 8/25/2016      | 12/31/2022          | 7/11/2019        | Jun-2022         | May-2022  | Shott                   | Reviewed and presenting to Board 7/11/2019. Extended 3 years |
| Fiduciary Counsel                 | Reed Smith         | 7/1/2021       | 6/30/2024           | 3/15/2021        | Mar-2024         | Jan-2027  | Ratto                   |  |
| Financial Auditor                 | MGO                | 2/19/2016      | 12/31/2021          | 1/19/2021        | N/A              | N/A       | Shott                   | RFP in process. See Agenda item A-2                          |
| General investment consultant     | Meketa             | 6/15/2016      | 3/31/2022           | 5/6/2019         | Dec-2022         | Nov-2021  | Murphy                  | Last review presented to Board 5/20/2019.                    |
| Private Equity consultant         | Aksia (TorreyCove) | 4/1/2018       | 4/1/2022            | 1/19/2021        | Jan-2024         | Oct-2021  | Murphy                  | RFP in process   |
| Real Estate consultant            | Townsend Holdings  | 4/1/2018       | 3/31/2022           | 1/19/2021        | Jan-2024         | Oct-2021  | Murphy                  | RFP in process   |
| Securities lending manager        | State Street       | 7/1/2017       | 6/30/2023           | 11/16/2020       | Jul-2023         | Jan-2023  | Murphy                  | Last review reported to Board on 11/16/2020                  |

#### Submitted by:

Jim Doezie  
 Contracts, Risk and Performance Administrator