

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

**GOVERNANCE COMMITTEE MEETING
March 20, 2025
9:30 A.M.**

Members of the Committee

Arthur Hidalgo, Chair
Roger Hilton, Vice-Chair
Shari Freidenrich
Richard Oates

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

OCERS Zoom Video/Teleconference Information	
Join Using Zoom App (Video & Audio) https://ocers.zoom.us/j/82585436547 Meeting ID: 825 8543 6547 Passcode: 116582 Go to https://www.zoom.us/download to download Zoom app before meeting Go to https://zoom.us to connect online using any browser.	Join by Telephone (Audio Only) Dial by your location +1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US +1 301 715 8592 US +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York) Meeting ID: 825 8543 6547 Passcode: 116582
A Zoom Meeting Participant Guide is available on OCERS website Board & Committee meetings page	

AGENDA

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

OPEN SESSION

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

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

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

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

CONSENT AGENDA

C-1 GOVERNANCE COMMITTEE MEETING MINUTES

Governance Committee Meeting Minutes

November 1, 2024

Recommendation: Approve minutes.

ACTION ITEMS

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

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

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

Presentation by Manuel Serpa, General Counsel

Recommendation: Consider and provide feedback on the current draft of the Membership Eligibility Requirements Policy.

A-3 ADOPTION OF THE DIGITAL SIGNATURE POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt the Digital Signature Policy.

A-4 TRIENNIAL REVIEW OF THE OVERPAID AND UNDERPAID PLAN BENEFITS POLICY

Presentation by Manuel Serpa, General Counsel, and David Kim, Assistant CEO, External Operations

Recommendation: Approve and recommend that the Board adopt the Overpaid and Underpaid Plan

Orange County Employees Retirement System
March 20, 2025
Governance Committee Meeting - Agenda

Page 3

Benefits Policy revisions.

A-5 TRIENNIAL REVIEW OF THE OVERPAID AND UNDERPAID CONTRIBUTIONS POLICY

Presentation by Manuel Serpa, General Counsel, and David Kim, Assistant CEO, External Operations

Recommendation: Approve and recommend that the Board adopt the Overpaid and Underpaid Contributions Policy revisions.

A-6 OFF-CYCLE REVIEW OF THE PAY ITEM REVIEW POLICY

Presentation by David Kim, Assistant CEO, External Operations, and Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt the Pay Item Review Policy revisions.

A-7 TRIENNIAL REVIEW OF THE INDEMNITY AND DEFENSE POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt minor revisions to the Indemnity and Defense Policy.

INFORMATION ITEMS

I-1 GOVERNANCE COMMITTEE WORK PLAN AND MEETING SCHEDULE FOR 2025

Presentation by Manuel Serpa, General Counsel

I-2 UPDATE ON THE EMPLOYER DATA PROJECT

Presentation by David Kim, Assistant CEO, External Operations, and Manuel Serpa, General Counsel

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETINGS

AUDIT COMMITTEE MEETING

March 25, 2025

9:30 A.M.

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

Orange County Employees Retirement System
March 20, 2025
Governance Committee Meeting - Agenda

Page 4

BUILDING COMMITTEE MEETING

April 2, 2025

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

DISABILITY COMMITTEE MEETING

April 21, 2025

8:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

REGULAR BOARD MEETING

April 21, 2025

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 or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.

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

**GOVERNANCE COMMITTEE MEETING
Friday, November 1, 2024
9:30 a.m.**

MINUTES

The Chair called the meeting to order at 9:34 a.m.

Recording Secretary administered the roll call.

Attendance was as follows:

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

Also present: Steve Delaney, CEO; Manuel Serpa, General Counsel; David Kim, Assistant CEO, External Operations; Rosie Baek, Staff Attorney; Jenny Sadoski, Director of IT; Todd Tauzer, Segal, Senior Vice President & Actuary; Silviu Ardeleanu, Director of Member & Employer Relations Section - Member Services; Bill Singleton, Paralegal; Will Tsao, Director of Enterprise Project Management Office; Kwame Addo, Chief Compliance Officer; Amanda Evenson, Executive Secretary; Carolyn Nih, Executive Secretary; Jeff Lamberson, Director of Retirement Operations - Member Services; Phillip Lam, Director of Internal Audit; Marielle Horst, Executive Secretary; Joon Kim, Staff Attorney; Mark Adviento, Senior Internal Auditor; Jenny Davey, Internal Auditor; Brenda Shott, Assistant CEO, Finance and Internal Operations; Adam Cupp, Member of the Public; Liza Le, Member of the Public; Nikhil Daftary, Member of the Public; Jingle Doan, Member of the Public; Bryan Drinkward, Member of the Public; Anthony Beltran, Audio Visual Technician; Rebeca Gonzalez-Verdugo, Recording Secretary;

CONSENT AGENDA

C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES

Governance Committee Meeting Minutes

August 15, 2023

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

The motion passed **unanimously**.

ACTION ITEMS

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

No items were trailed from the Consent Agenda.

A-2 TRIENNIAL REVIEW OF THE DISPOSITION OF SURPLUS PROPERTY POLICY

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

Recommendation: Approve, and recommend that the Board adopt, revisions to the Disposition of Surplus Property Policy.

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

The motion passed **unanimously**.

A-3 TRIENNIAL REVIEW OF THE PAY ITEM REVIEW POLICY

Presentation by David Kim, Assistant CEO, External Operations, and Manuel D. Serpa, General Counsel

Recommendation: Approve and recommend that the Board adopt revisions to the Pay Item Review Policy.

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

The motion passed **unanimously**.

A-4 TRIENNIAL REVIEW OF THE RECORDS MANAGEMENT POLICY

Presentation by Manuel Serpa, General Counsel

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

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

- "The Chief Executive Officer ("CEO") may authorize the request to exceed the retention schedule beyond the period shown on the Retention Schedule by designating it as an archival record..."
- Increase the retention period of the Investment Manager Contracts to "Active + 7 years."
- Move the Background Checks category under the Recruitment Process Records.
- Remove the Legal Memoranda and other Attorney Work Product record category.
- Change the retention period of the Compliance Program Documents to "Active + 7 years."
- Remove the full Communications category from the Policy.

The motion passed **unanimously**.

A-5 OFF-CYCLE REVIEW OF THE MEMBERSHIP ELIGIBILITY REQUIREMENTS POLICY

Presentation by Manuel Serpa, General Counsel

Recommendation: Approve and recommend the Board adopt revisions to the Membership Eligibility Requirements Policy.

After discussion, the Committee provided direction to staff to continue to meet with Employers before the first Governance Committee meeting in 2025 to ensure all issues are addressed and provide an update on current progress with Employers at the December Board meeting.

The Committee provided further direction to staff to create an additional policy that will address working retirees.

The Committee recessed for break at 10:45 a.m.

The Committee reconvened from break at 10:58 a.m.

The Chair administered the Roll Call attendance.

A-6 CONSIDERATION OF AN EMPLOYER DATA POLICY

Presentation by David Kim, Assistant CEO, External Operations, and Manuel Serpa, General Counsel

Recommendation: Consider and provide guidance on the current draft of an Employer Data Policy.

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

With the Employers expressing concern regarding the possible addition of fee implementation language to the draft policy, the committee agreed to the following schedule:

1. Year one, the fee implementation language will be shared in the policy cover memo each time it is reviewed, and benchmarks for employer progress will be provided for the end of year one. If an employer does not meet its benchmark at the end of the one-year review, the fee implementation language will be immediately adopted and available for staff to use in future interactions.
2. Year two, the fee implementation language will again be shared in the policy cover memo each time it is reviewed, and new benchmarks for employer progress will be provided for the end of year two. If an employer does not meet its benchmark at the end of the year two review, the fee implementation language will be immediately adopted and available for staff to use in future interactions.
3. At the end of year three, at the time of the policy's triennial review, the fee implementation language will be immediately adopted and available for staff to use in future interactions.

The Committee also provided direction to staff to continue to meet with Employers to discuss the next draft of the policy and to provide the future committee members a quarterly update on the progress with Employers. The Committee discussed the potential implementation of the AB 2284 definition of "grade."

A-7 REVIEW OF THE OCERS ADMINISTRATIVE PROCEDURE ON THE TOPIC OF THE DIVISION OF RETIREMENT BENEFITS UPON DIVORCE

Presentation by Rosie Baek, Staff Attorney

Orange County Employees Retirement System
November 1, 2024
Governance Committee Meeting – Minutes

Page 4

Recommendation: Review and recommend that the Board approve the revisions to the OCERS Administrative Procedure on the Topic of the Division of Retirement Benefits Upon Divorce.

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

The motion passed **unanimously**.

INFORMATION ITEMS

I-1 STRATEGY TO PREPARE FOR ACTUARIAL SURPLUS IN OCERS ACTUARIAL FUNDING POLICY

Presentation by Todd Tauzer, Segal

The Committee provided direction to staff to schedule a similar presentation at the 2025 Strategic Planning Workshop to inform the Board on the glide plan for Surplus Management Process within the Actuarial Funding Policy. The Committee provided additional direction to begin planning for surplus after the Strategic Planning Workshop by meeting with plan sponsors to discuss the implementation of a glide plan and begin discussing updating the Actuarial Funding Policy with the Governance Committee meeting in 2026.

COMMITTEE MEMBER COMMENTS

Mr. Hidalgo and Mr. Oates thanked Mr. Prevatt for his work as the committee chair.

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

Mr. Delaney shared that the information item will count as 1-hour of education for the Committee members

COUNSEL COMMENTS

None.

ADJOURNMENT

Chair adjourned meeting at 12:12 p.m.

Submitted by:

Approved by:

Manuel Serpa
General Counsel/Staff Liaison

Steve Delaney
Chief Executive Officer/Secretary

Chris Prevatt
Chair



Memorandum

DATE: March 20, 2025
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel; David Kim, Assistant CEO, External Operations
SUBJECT: OFF-CYCLE REVIEW OF THE MEMBERSHIP ELIGIBILITY REQUIREMENTS POLICY

Recommendation

- (1) Consider and provide feedback on the current draft of the Membership Eligibility Requirements Policy.

Background/Discussion

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

This policy version is the same as that presented to the Governance Committee at its last meeting but with the following change. In this draft, we have reverted to a previous version of the definition of the term "year." As stated in paragraph 3:

The term "year" in this policy refers to a fiscal year or a calendar year, whichever the Participating Employer designates for uniform application to all its employees.

This change was made to minimize disruption for employers who use a calendar year instead of a fiscal year.

In addition, for the committee's consideration is the following note in paragraph 5 of the existing policy:

Note: Per section 4(a), all employees hired with the expectation that they will work less than one year are properly excluded from OCERS membership for that year, regardless of how their position may be designated. If such employees ultimately work more than one year, they should be enrolled in OCERS membership if they work more than 1,040 hours per year (if not "extra help") or more than 1,600 hours per year (if "extra help").

As discussed in previous meetings, the effect of this note is that the hour limit will not apply to these employees for their initial year of work. We removed this note and set forth the limits in new paragraph 8:

8. Each Participating Employer is responsible for monitoring the number of hours worked by Extra Help employees.

a. An Exceptional Extra Help employee who works 1,600 hours in one year must have a minimum break of sixty calendar days before starting another Extra Help Position in the following year. Any Exceptional Extra Help employee exceeding 1,600 hours in one year must enroll in OCERS membership.

b. A Standard Extra Help employee who works 1,040 hours in one year must have a minimum break in employment of at least sixty calendar days before starting another Extra Help Position in the following year. Any Standard Extra Help employee exceeding 1,040 hours in one year must enroll in OCERS membership.

However, the County objects to this change. As stated in the letter from County Counsel of October 25, 2024 (attached):

The County often must hire temporary employees to address operational needs or specific labor shortages. Flexibility in hiring is even more critical in a tight labor market. Certain specialized or professional employees prefer to work on a temporary basis with the expectation they will work less than a year and not be long term or continuous employees. County labor costs will naturally rise if the County is required to enroll these temporary employees in OCERS.

Thus, the committee may wish to consider maintaining the substance of the existing provision by modifying the proposed paragraph 8 to state:

All employees hired with the expectation that they will work less than one year are properly excluded from OCERS membership for that year, regardless of how their position may be designated.

a. After that initial year, a Standard Extra Help employee who works more than 1,040 hours in any one year must enroll in OCERS membership.

b. After that initial year, an Exceptional Extra Help employee who works more than 1,600 hours in any year must enroll in OCERS membership.

Staff can administer the policy terms with or without the existing initial year exception. However, we believe maintaining the status quo is the simpler option. Whenever you add new standards to an existing process, you increase the difficulty of maintaining it, in this case, for both OCERS and the employers. This issue could also be revisited in the future if warranted.

A summary of the other changes from the existing policy follows.

- The following sentences were added to paragraph 2:
 - Additionally, each Participating Employer is responsible for monitoring the status of employees who are ineligible to participate in the Plan and for timely notifying OCERS of any change necessitating membership. Each Participating Employer must submit an annual report to OCERS, listing all "Extra Help Position" employees and their total hours worked.
- Paragraphs 4 and 5 were added to define extra help and to distinguish between newly defined standard extra help and exceptional extra help:
 - 4. Definition of Extra Help Position: An Extra Help Position is a position intended to be occupied on less than a year-round basis for circumstances that include the following:
 - a. to cover seasonal peak workloads;
 - b. for extra emergency workloads of limited duration; or
 - c. for necessary vacation relief, paid sick leave, and other fluctuating staff situations.
 - 5. For purposes of this policy, Extra Help Positions are "Exceptional" or "Standard." An "Exceptional Extra Help" position is one that:
 - a. Requires professional or highly technical skills for more than one year;^[1]
 - b. Is designated "intern" for more than one year (i.e., entry-level as per the Participating Employer's salary resolution or comparable classification scheme);

c. Is designated "seasonal" for more than one year and that works in less than seven calendar months per year;^[2] or

d. Is designated "intermittent" for more than one year (i.e., works irregularly, as needed).

All others are "Standard Extra Help" positions.

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

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

- The following factor was added to those the Board will consider in granting an exception under paragraph 9:
 - The urgency of the employer's need to fill the position on a temporary basis.

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

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



DK-Approved

David Kim
Assistant CEO, External Operations



OCERS Board Policy Membership Eligibility Requirements

Purpose and Background

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

Policy Objectives

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

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

Roles and Responsibilities

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

Policy Guidelines

3. The term "year" in this policy refers to a fiscal year or a calendar year, whichever the Participating Employer designates for uniform application to all its employees.
4. Definition of Extra Help Position: An Extra Help Position is a position intended to be occupied on less than a year-round basis for circumstances that include the following:
 - a. to cover seasonal peak workloads;
 - b. for extra emergency workloads of limited duration; or



OCERS Board Policy

Membership Eligibility Requirements

c. for necessary vacation relief, paid sick leave, and other fluctuating staff situations.

5. For purposes of this policy, Extra Help Positions are "Exceptional" or "Standard." An "Exceptional Extra Help" position is one that:

- a. Requires professional or highly technical skills for more than one year;¹
- b. Is designated "intern" for more than one year (i.e., entry-level as per the Participating Employer's salary resolution or comparable classification scheme);
- c. Is designated "seasonal" for more than one year and that works in less than seven calendar months per year;² or
- d. Is designated "intermittent" for more than one year (i.e., works irregularly, as needed).

All others are "Standard Extra Help" positions.

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

~~Any employee of the Participating Employer who is:~~

- a. ~~Hired~~Those hired with the expectation of employment for more than one year and at least 1,040 hours per year, or who is actually employed for more than one year and at least 1,040 hours per year for at least one of those years; and
- b. Not expressly excluded from membership under Paragraph ~~5 below~~7.

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

Any employee of the Participating Employer who:

- a. Is a retired member who satisfies the requirements of Government Code section 7522.56 to serve a Participating Employer without reinstatement from retirement;~~or~~ and that does not exceed a total of 960 work hours per year; or
- b. Has executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60); or

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

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



OCERS Board Policy

Membership Eligibility Requirements

- ~~c.~~ Is hired with the expectation of employment for less than 1,600 hours per year, is actually employed for less than 1,600 hours in every year, and is classified as “extra help” part-time and scheduled to work less than twenty (20) hours weekly.
- ~~c.d.~~ Is classified as an Extra Help Position by the Participating Employer because he or she works in a position that does not exceed the hour limits set forth in Paragraph 8.
- ~~i.~~ Requires professional or highly technical skills for more than one year;
 - ~~ii.~~ Is designated “intern” for more than one year (entry level and consistent with the Each Participating Employer’s salary resolution or comparable classification-scheme);
 - ~~iii.~~ Is designated “seasonal” for more than one year (works in less than seven-calendar months per year); or
 - ~~iv.~~ Is designated “intermittent” for more than one year (works on an irregular, as-needed basis).
- ~~8.~~ **Note: Per section 4(a), all** Employer is responsible for monitoring the number of hours worked by Extra Help employees ~~hired with the expectation that they will work less than one year are properly excluded from OCERS membership for that year, regardless of how their position may be designated. If such employees ultimately work more than one year, they should be enrolled in OCERS membership if they work more than 1,040 hours per year (if not “extra help”) or more than 1,600 hours per year (if “extra help”).~~
- ~~a.~~ An Exceptional Extra Help employee who works 1,600 hours in one year must have a minimum break of sixty calendar days before starting another Extra Help Position in the following year. Any Exceptional Extra Help employee exceeding 1,600 hours in one year must enroll in OCERS membership.
 - ~~b.~~ A Standard Extra Help employee who works 1,040 hours in one year must have a minimum break in employment of at least sixty calendar days before starting another Extra Help Position in the following year. Any Standard Extra Help employee exceeding 1,040 hours in one year must enroll in OCERS membership.
- ~~6.9.~~ The Board may grant exceptions to the requirements of Paragraphs 4 and 5 Paragraph 8 if the Board determines that doing so is consistent with the intent of this Policy and is fair to all parties. ~~For example:~~ Factors to consider in granting an exception will include:
- ~~a.~~ The Board may consider an An employee’s preference not to be enrolled as a member of OCERS, even though that preference alone does not justify exclusion from OCERS membership; ~~and~~
 - ~~b.~~ The Board may consider whether urgency of the employer’s need to fill the position on a temporary basis; and
 - ~~b.c.~~ Whether an employee’s work hours exceeded the relevant maximum due to administrative oversight.



OCERS Board Policy

Membership Eligibility Requirements

~~7.10.~~ When a Participating Employer fails to comply with ~~the requirements of Paragraphs 4 and 5~~ Paragraph 8, and ~~the Board does not grant~~ an exception under Paragraph 69 is not granted, the Board will exercise its discretion to determine an appropriate correction procedure based on the facts of each case.

~~8.—For purposes of Paragraphs 4 and 5, the term “year” refers to a fiscal year or a calendar year, whichever is used by the Participating Employer for employment purposes.—~~

~~9.11.~~ A Participating Employer that temporarily employs an individual who (i) previously was the employee of a labor supplier with which the Participating Employer contracted, and (ii) would otherwise be excluded from OCERS membership under this Policy, will be permitted to exclude the individual from OCERS membership for a period of up to one year. ~~.- The Board will consider requests for exceptions from the requirements of this paragraph based on the facts of each case, but will not extend the one-year period for excluding the employee from OCERS membership by more than one additional year.~~

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

Policy Review

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

Policy History

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

Secretary’s Certificate

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

 Steve Delaney Secretary of the Board	<u>10/16/2023</u> Date
--	---------------------------



OCERS Board Policy Membership Eligibility Requirements

Purpose and Background

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

Employer Responsibility

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

Policy Guidelines

3. The term "year" in this policy refers to a fiscal year or a calendar year, whichever the Participating Employer designates for uniform application to all its employees.
4. **Definition of Extra Help Position:** An Extra Help Position is a position intended to be occupied on less than a year-round basis for circumstances that include the following:
 - a. to cover seasonal peak workloads;
 - b. for extra emergency workloads of limited duration; or
 - c. for necessary vacation relief, paid sick leave, and other fluctuating staff situations.
5. For purposes of this policy, Extra Help Positions are "Exceptional" or "Standard." An "**Exceptional Extra Help**" position is one that:
 - a. Requires professional or highly technical skills for more than one year;¹

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



OCERS Board Policy Membership Eligibility Requirements

- b. Is designated "intern" for more than one year (i.e., entry-level as per the Participating Employer's salary resolution or comparable classification scheme);
- c. Is designated "seasonal" for more than one year and that works in less than seven calendar months per year;² or
- d. Is designated "intermittent" for more than one year (i.e., works irregularly, as needed).

All others are "**Standard Extra Help**" positions.

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

- a. Those hired with the expectation of employment for more than one year and at least 1,040 hours per year, or who is actually employed for more than one year and at least 1,040 hours per year for at least one of those years; and
- b. Not expressly excluded from membership under Paragraph 7.

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

Any employee of the Participating Employer who:

- a. Is a retired member who satisfies the requirements of Government Code section 7522.56 to serve a Participating Employer without reinstatement from retirement and that does not exceed a total of 960 work hours per year; or
- b. Has executed a lawful waiver of membership (e.g., elected officials and members entering employment after age 60); or
- c. Is classified as part-time and scheduled to work less than twenty (20) hours weekly.
- d. Is classified as an Extra Help Position by the Participating Employer that does not exceed the hour limits set forth in Paragraph 8.

8. Each Participating Employer is responsible for monitoring the number of hours worked by Extra Help employees.

- a. An **Exceptional Extra Help** employee who works 1,600 hours in one year must have a minimum break of sixty calendar days before starting another Extra Help Position in the following year. **Any Exceptional Extra Help employee exceeding 1,600 hours in one year must enroll in OCERS membership.**
- b. A **Standard Extra Help** employee who works 1,040 hours in one year must have a minimum break in employment of at least sixty calendar days before starting another Extra Help Position in the following year. **Any Standard Extra Help employee exceeding 1,040 hours in one year must enroll in OCERS membership.**

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



OCERS Board Policy

Membership Eligibility Requirements

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

Policy Review

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

Policy History

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

Secretary's Certificate

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

 Steve Delaney Secretary of the Board	 Date
--	------------------



**OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE**

400 WEST CIVIC CENTER DRIVE, SUITE 202
SANTA ANA, CA 92701
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CA 92702-1379
(714) 834-3300
FAX: (714) 834-2359

Nikhil G. Daftary
Senior Deputy
(714) 334-5419

E-Mail:
nikhil.daftary@coco.ocgov.com

October 25, 2024

Sent via E-Mail & U.S.P.S:
sdelaney@ocers.org

Steve J. Delaney
Chief Executive Officer
Orange County Retirement System
PO Box 1229
Santa Ana, CA 92702

Re: Proposed Amended Membership Policy

Mr. Delaney:

The County of Orange (the "County") appreciates the opportunity to review and provide feedback regarding the proposed changes to the Orange County Employees Retirement System's ("OCERS") Membership Policy. OCERS has communicated that these changes are necessary because of reports that some Extra-Help employees are exceeding the hourly limits contained in the Policy. However, as discussed in more detail below, the proposed amendments do not focus on fixing these Policy violations. Instead, the proposed modifications will hinder the County from hiring temporary employees needed for its business operations and labor shortages.

OCERS is permitted to exclude from membership "...persons whose tenure is temporary, seasonal, intermittent, or for part time only." Government Code, section 31527(e). The current OCERS Membership Policy properly excluded temporary workers stating, "Per section 4(a), all employees hired with the expectation that they will work less than one year are properly excluded from OCERS membership for that year, regardless of how their position may be designated. If such employees ultimately work more than one year, they should be enrolled in OCERS membership if they work more than 1,040 hours per year (if not 'extra help') or more than 1,600 hours per year (if 'extra help')."

The proposed amended Membership Policy, without reason, removes this exclusion of employees hired with the expectation they will work less than a year and instead states that if an Extra-Help position exceeds the applicable hourly limitation, within 12 months of their date of hire, they must either be enrolled in OCERS or have a sixty-day break in employment. The County often must hire temporary employees to address operational needs or specific labor shortages. Flexibility in hiring is even more critical in a tight labor market. Certain specialized or professional employees prefer to work on a temporary basis with the expectation they will work less than a year and not be long term or continuous employees. County labor costs will naturally rise if the County is required to enroll these temporary employees in OCERS. The

Steve J. Delaney
Chief Executive Officer
Orange County Retirement System
Page 2

County will also need to track employees' individual hours worked from their specific date of hire instead of on a fiscal year basis. This change will increase administration costs.

Most concerning, the County will have difficulty attracting needed temporary employees. Almost without exception, an employee hired with the expectation that he or she will work less than a year does not want to be automatically enrolled in and make senseless contributions to fund a pension that he or she will never use. The impacted employees, employers and OCERS must all pay the pointless costs and expend the time necessary to make contributions which will only be withdrawn or returned to employees when they are separated.

OCERS has not cited any authority why an employee hired with the expectation that they will work less than a year is anything other than a temporary employee who is properly excluded under Government Code section 31527(e). Instead, OCERS states that the changes are necessary because there are violations of the hourly limits in the Membership Policy. The County does not understand, nor has OCERS explained, how the proposed changes address the violations of the Policy's hourly limits. Similarly, OCERS has always permitted its employers to track Extra-Help hours worked on a fiscal basis. Never has there been a requirement that employers track such hours for each employee from their specific date of hire. No legal authority was noted by OCERS explaining why such a change is necessary.

The County strongly believes any concern regarding ongoing violations of the Policy's hourly limits are better addressed by improved tracking and monitoring of Extra-Help employees' hours worked. The County welcomes the opportunity to work with OCERS towards a solution to the purported violations. If there are any additional concerns that are driving the changes to the OCERS Membership Policy, the County will work with OCERS on those issues. However, as stated above, the proposed changes do not address the purported Policy violations and no other reason has been given why the proposed changes are necessary.

The County may raise additional concerns. The proposed changes were formally presented to employers on October 15, 2024. The employers were only given until October 25, 2024 to review and respond to the proposed modifications. As each County department reviews the proposed changes, additional concerns may be raised. County staff will work to inform OCERS of these additional concerns.

The County also objects to any requirement that the Membership Policy must be amended before the end of the calendar year. The County and most other OCERS employers track Extra-Help employees on a fiscal year basis and there is no legal requirement for the Policy to be amended this calendar year. Considering the potential impact to the County and other employers' operations, changes to the Membership Policy should be carefully considered with ample time for employers to review the modifications and address concerns with OCERS. The County requests that both the OCERS' Governance Committee and the Retirement Board not approve or adopt, or at a minimum, delay from approving or adopting the proposed

Steve J. Delaney
Chief Executive Officer
Orange County Retirement System
Page 3

modifications at their November or December meetings. The County requests additional time to work with OCERS to address the County concerns stated above as the proposed changes by OCERS does not address the supposed issue. If OCERS goes forward, OCERS should specify why the modifications must be immediately adopted and provide the County with an opportunity to respond.

Thank you again for the opportunity to review and voice concerns with the proposed amended Membership Policy.

Very truly yours,

LEON J. PAGE
COUNTY COUNSEL

By 
Nikhil G. Daftary, Senior Deputy

NGD:jh

cc: Michelle Aguirre, County Executive Officer (via email)
David Kim, Asst. CEO, External Operations, OCERS (via email)
Manuel Serpa, General Counsel, OCERS (via email)



Memorandum

DATE: March 20, 2025
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel
SUBJECT: ADOPTION OF THE DIGITAL SIGNATURE POLICY

Recommendation

Approve and recommend that the Board adopt the Digital Signature Policy.

Background

OCERS currently utilizes digital signatures for non-member business, such as in the hiring of employees and the procurement of vendors. Staff now wishes to extend this use to member-related documents to improve efficiency and enhance convenience for members and their beneficiaries. The law permits electronic signatures, but the best practice is for OCERS to adopt a digital signature policy that states OCERS' intent to engage in such electronic transactions and accept e-signatures from its membership. Acceptance of digital signatures, where legally permissible, is consistent with our fiduciary duty to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries.

Discussion

Government Code § 31527(i) of the County Employees Retirement Law of 1937 ("CERL") states that the Board may permit the use and acceptance of a document requiring a signature submitted by a member using an electronic signature, if the document and electronic signature are submitted using technology the board deems sufficient to ensure its integrity, security, and authenticity. Also, California has adopted the Uniform Electronic Transactions Act (the "Act"), which specifies the general legal requirements for use of e-signatures and provides guidance on what qualifies as an electronic signature that ensures integrity, security, and authenticity (Civ. Code §§ 1633.1 *et seq.*). The Act includes three main requirements for the use of electronic signatures:

- Mutual Consent: An e-signature may only be accepted in a transaction where each party has agreed to conduct the transaction electronically.¹
- Intent: The e-signatures must be executed or adopted by a person with the intent to sign the electronic record.²
- Security Procedure: The e-signature must be rendered using sufficient technology that verifies it as attributable to the person who acted to render the e-signature, which includes encryption, audit trails, or other acknowledgement processes.³

The Digital Signature Policy draft states that OCERS deems the DocuSign and the NeoGov platforms sufficient to meet these requirements. As the County utilizes electronic signatures via its NeoGov platform, OCERS will also accept as valid electronic signatures submitted through that platform if the County accepts them as authentic.

¹ Civ. Code § 1633.5(b).

² Civ. Code § 1633.2(h).

³ Civ. Code § 1633.2(n).

The policy also states that digital signatures are not required. If a member or beneficiary does not wish to conduct the transaction electronically, they may sign a paper document with a "wet" signature.

Lastly, the policy also permits using electronic signatures in the notarization process.

The proposed draft of the Digital Signature Policy is attached.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Digital Signature Policy

Purpose

1. OCERS has enhanced its provision of service to members and beneficiaries through the implementation of electronic documents and digital communication channels. The Digital Signature Policy aims to improve OCERS' service and ensure the efficient administration of benefits by permitting electronic or digital signatures (also referred to as e-signatures) on documents utilizing secure technology and in compliance with governing law.

Guidelines

2. The OCERS Board of Retirement deems the DocuSign and the NeoGov platforms sufficient to ensure a document's integrity, security, and authenticity with a member or beneficiary's electronic/digital signature and compliant with the Uniform Electronic Transactions Act. Thus, a document with an electronic signature that a member or beneficiary submits to OCERS through DocuSign or through the County of Orange's NeoGov system shall be given the same force as a signed and valid original paper document.
3. However, digital signatures are not required. A member or beneficiary may choose to sign a paper document with a "wet" signature if they do not wish to conduct the transaction electronically.
4. The use of electronic signatures in the notarization process is also permissible, as long as the electronic record includes (per Civ. Code § 1633.11), in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

Policy Review

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

Policy History

6. This policy is adopted on [date].

Secretary's Certificate

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

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

Steve Delaney
Secretary of the Board

Date



Memorandum

DATE: March 20, 2025
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel; David Kim, Assistant CEO External Operations
SUBJECT: TRIENNIAL REVIEW OF THE OVERPAID AND UNDERPAID PLAN BENEFITS POLICY

Recommendation

Approve and recommend that the Board adopt the Overpaid and Underpaid Plan Benefits Policy revisions.

Discussion

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

The Board adopted the Overpaid and Underpaid Plan Benefits Policy on May 16, 2016, and most recently amended it on November 15, 2021.

Although edits have been made to rephrase the material to improve clarity and readability, the main substantive changes incorporate the requirements of AB 3025. Otherwise, you will note that the exception for overpayments or underpayments discovered in 90 days or less as been removed from the policy. This was an administrative convenience deemed unnecessary.

The California Legislature recently enacted AB 3025, which took effect on January 1, 2025, codified as Section 31541.2 of the Government Code. AB 3025 establishes new processes for county retirement systems regarding pay code review and handling overpayment corrections while introducing new notification requirements for specific corrections.

It also imposes payment obligations on participating employers for "disallowed compensation" paid to affected retired members, beneficiaries, or survivors. The statute defines "disallowed compensation" as reporting errors in which a pay item was reported as pensionable when it should have been classified as non-pensionable under the Public Employees' Pension Reform Act of 2013 ("PEPRA") and the holding of *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* ("Alameda"), without any fault on the part of the member.

According to the author of AB 3025, "[w]hen compensation is disallowed, retirees have to take a significant reduction in their monthly retirement distribution and pay the system back. This puts a massive burden on employees who dedicate their careers to public service with the promise of a secure retirement. In response, AB 3025 seeks to mitigate and rebalance the financial burden associated with correcting "disallowed compensation" items. Thus, the employer must pay the system the full cost of any overpayment of benefits previously issued to an affected retired member, survivor, or beneficiary due to disallowed compensation. Additionally, the employer must pay the affected retired member, survivor, or beneficiary 20% of the actuarial equivalent present value of the difference between the monthly allowance that included the disallowed compensation and the corrected monthly allowance.

Some CERL systems are still undergoing Alameda corrections to eliminate "disallowed compensation," while many other CERL systems have completed their corrections. AB 3025 allows a limited exception for these prior

corrections to avoid hindering these existing efforts. Specifically, AB 3025 excludes its correction procedures when a CERL system has "initiated a process" to address identified "disallowed compensation." AB 3025 defines "initiated a process" to mean a retirement system has "formally adopted a resolution or made an administrative determination for a correction process on *identified* disallowed compensation. Under the exception, a CERL system that had "initiated a process" before 2024 "may continue to use that process provided that it is consistent with PEPR, and the holding of *Alameda*."

AB 3025's correction requirements differ based on the member's status in the retirement system (i.e., whether the member is active, deferred, or retired), and it treats survivors and beneficiaries as retired members for corrections. ***It prescribes the following processes, the substance of which has been added to the Overpaid and Underpaid Plan Benefits Policy as Section 12 and to the Overpaid and Underpaid Contributions Policy as Section 15:***

Active Members

Unless OCERS has "Initiated a Process" before January 1, 2024:

OCERS will credit all employer contributions made on the disallowed compensation against future contributions to the benefit of the employer that reported the disallowed compensation.

Return any member contributions paid by, or on behalf of, that member to the member directly or indirectly through the employer.

Retired Member, Survivor, or Beneficiary

When OCERS determines that the final compensation of a retired member and that of a survivor or beneficiary was based on Disallowed Compensation, it will credit the employer contributions made on that Disallowed Compensation against future contributions for the employer that reported it. OCERS will return any member contributions paid by or on behalf of that member directly to them, and OCERS will permanently adjust the benefits of the affected retired member, survivor, or beneficiary to reflect the exclusion of the Disallowed Compensation.

Notice and Employer Obligations

Additional notice and employer payment requirements apply if all three of the following conditions are met:

1. The employer reported the compensation to the retirement system and made contributions on that compensation while the member was actively employed.
2. OCERS determined after the date of retirement that the compensation was disallowed.
3. The member was not aware that the compensation was disallowed at the time the employer reported it.

Should all three of the above conditions be met, OCERS will provide written notice to both the employer and the affected retired member, survivor, or beneficiary that includes the following information:

- The overpayment amount the employer shall pay to OCERS.
- The actuarial equivalent present value that the employer owes to the
- retired member, survivor, or beneficiary, as detailed below.
- Disclosure of the employer's obligations to the retired member, survivor, or beneficiary per this policy.

In addition, should all three of the above conditions be met, the Employer is obligated to pay the following:

Pay to OCERS, as a direct payment, or through recognition in the actuarial accrued liability, as determined by OCERS, the full cost of any overpayment of the prior paid benefit made to an affected retired member, survivor, or beneficiary resulting from the Disallowed Compensation.

The employer must pay to the affected retired member, survivor, or beneficiary 20% of the actuarial equivalent present value of the following calculation:

1. the difference between the monthly allowance that included the “Disallowed Compensation” and the newly adjusted monthly allowance that excluded it, and
2. multiplied by the duration OCERS projects to pay the benefit to the affected retired member, survivor, or beneficiary.

OCERS will charge the employer the actual costs of actuarial services necessary to make this calculation.

The employer must begin this payment within six months of notice from the retirement system and may have up to four years to complete the payment.

Disclosure of Member Information to Employer

Upon an employer’s request, OCERS will provide the employer with contact information data of a relevant retired member, survivor, or beneficiary so that the employer or agency can fulfill its obligations to that retired member, survivor, or beneficiary under this policy. The employer shall keep this contact information data confidential, use such contact data only to the extent necessary to carry out its duties under this policy, and not disclose it under the California Public Records Act.

The proposed revisions are set forth in underlined/strikeout text in the attached copies of the Overpaid and Underpaid Plan Benefits and Overpaid and Underpaid Contributions Policies. Unmarked versions of the Policies are also attached for the Committee’s ease of review.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



DK-Approved

David Kim
Assistant CEO, External Operations



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~~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 ("IRS") 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.~~
2. In the event that an overpayment is the result of a felony conviction, OCERS Administrative Procedure (OAP) on Felony Forfeitures shall be used as a basis for resolution, instead of this Policy.

Policy Objectives

- ~~2-3.~~ Members and their survivors, beneficiaries, or payees (herein referred to as "~~members~~Members") have a right to accurate retirement benefit payments. ~~No memberMember~~ has the right to receive or retain retirement benefit payments that exceed the amounts to which a memberMember is entitled, and no memberMember may be deprived of any benefit payments ~~that he or she is~~they are 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

- ~~3-4.~~ After discovery of overpaid or underpaid benefits, and within a reasonable period of time after written notification to the affected memberMember, OCERS will correct the benefit payment amount prospectively to prevent additional overpayments or underpayments, and will pay to the memberMember in a lump sum, or collect from the memberMember through lump sum or installment payments, the amounts to which the memberMember or the Plan is entitled ~~in accordance with~~per this policy and applicable law.
5. ~~These policies~~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: (1) recover from a Member the amount of overpaid Plan benefits and/or (2) remit to a Member the amount of underpaid Plan benefits.



OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

Policy Guidelines

6. The procedures described in this Policy are designed for use when calculation and other errors affect an individual ~~member's~~ Member's retirement benefits. For corrections of errors affecting the overpayment of individual Member's retirement benefits identified on or after 2024, the correction process to be implemented shall be consistent with the requirements of Government Code § 31541.2, as outlined in Section 15 below.
- 4.7. In the event of a system-wide error that affects multiple ~~members'~~ Members' benefits, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances. The determination by the Board of a correction process to be implemented shall be consistent with the requirements of Government Code § 31541.2, as outlined in Section 12 below.
- 5.8. In the event of any inconsistency between applicable law (including IRS rules and guidance) and ~~these policies and procedures~~ this Policy, the law shall govern.



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

Policy Procedures for Overpaid Benefits

9. The procedures for recouping overpaid benefits shall depend on whether the overpayment was a result of the Member's employer's reporting of "Disallowed Compensation" as that term is defined in Government Code § 31541.2., or otherwise.

~~6-10.~~ **Recovery of Overpaid Benefits Unrelated to Disallowed Compensation.** When an overpayment of Plan benefits is discovered ~~more than ninety (90) days~~ after the ~~member/~~Member or payee's initial benefit payment, OCERS will first adjust the benefit payment prospectively to reflect the correct benefit amount and to prevent additional overpayments. OCERS will also take all reasonable steps to recover the full amount of all overpayments, going back to the inception of the error, and recouping "appropriate interest," as defined in ~~section 7~~subdivision (a) below, during the period ~~in which~~when the benefit overpayments ~~were made~~occurred and ~~also during~~throughout any repayment period ~~(, i.e., applied interest will apply to the outstanding amount due until fully repaid).~~ No interest will be collected when OCERS discovers the overpayment within ninety (90) days of the payment.

~~7-a.~~ **Appropriate Interest.**

~~a.i.~~ **"Appropriate interest"** ~~means~~Interest is an interest amount determined using the System's actuarially assumed rate of return as of the date OCERS sets ~~for commencing to commence~~ repayment.

~~b.ii.~~ In cases where OCERS determines there is evidence that the benefit overpayment resulted from fraud or dishonest conduct by the ~~member/payee~~Member or because the ~~member/payee~~Member provided, or caused to be provided, inaccurate information to OCERS or the ~~member's~~Member's employer, then ~~"appropriate interest"~~Appropriate Interest shall be recouped directly from the ~~member/payee.~~Member.

~~c.iii.~~ In cases other than those described above in ~~Section 7.b,~~ "appropriate interest" ~~subdivision (a)(ii),~~ Appropriate Interest shall be recouped from the ~~member's~~Member's employer as part of the annual actuarial valuation process.

~~8.b.~~ **Recovery Threshold.** The Board believes ~~that considerations of cost-effectiveness~~ considerations make it prudent and reasonable to pursue recovery of overpaid benefits only where the cumulative total amount of overpaid benefits is \$250 or more. ~~Accordingly, OCERS is authorized to not to~~ seek recovery of any such overpaid benefits where the total amount overpaid to the ~~member~~Member is less than \$250.

~~9.c.~~ **Time Period for Installment Payments.** ~~When recovering benefit overpayments, the following apply:~~

~~a.i.~~ **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~~ Member's installment payments to a period not exceeding the expected lifetime of the ~~member~~Member as determined by the actuary.



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

~~b.~~ ii. Chief Executive Officer (CEO): Regardless of the amount of the Plan's claim against the ~~member~~ Member, the CEO shall have the authority to agree to extend the time period for the ~~member's~~ Member's installment payments to a period not exceeding the expected lifetime of the ~~member~~ Member as determined by the actuary.

d. 10. Compromising claims:- The amount of the Plan's claim for overpaid benefits is the difference between the amounts actually paid to the ~~member~~ Member during the overpayment period and the amounts that should have been paid, together with ~~"appropriate interest"~~ Appropriate Interest from the dates of the actual overpayments 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~~ Member will be considered by the CEO and/or the Board when determining whether to compromise a claim. ~~with the Member.~~ Compromising ~~a such~~ claim may include a different method of repayment than is otherwise provided by this Policy ~~and/or, including the~~ forgiveness or partial forgiveness of principal ~~and/or~~ interest, subject to applicable IRS rules and guidance.

i. a.—When the total amount of the Plan's claim against the ~~member~~ 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.

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

11. 11. Recovery Procedures: 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~~ notify the Member by certified mail, return receipt requested, or by express delivery service, ~~to the member/payee.~~ Subject to the provisions of this Policy, the letter will provide the following information to the ~~member/payee~~ Member regarding the overpaid benefits:
 - i. ~~Provide notice~~ Notice of the prospective adjustment to the benefit payment (to reflect the correct amount);
 - ii. ~~Request~~ A request for payment to OCERS of the amount of overpaid benefits with ~~appropriate interest as defined in section 7, above~~ Appropriate Interest; and
 - iii. Unless otherwise determined by the Board, the CEO, or the Director of Member Services ~~(see sections 9.a. and 9.b., above),~~ or, if a repayment plan for a longer period is needed due to the limitation described in section ~~6, 10~~ 6, 10 above, the letter will set a repayment plan with two options:
 - *Option 1* – equal installments deducted from the ~~member/payee's~~ 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 7, above)~~ Appropriate Interest applied during the repayment period; and



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

- *Option 2* – lump sum payment to the Plan for the full amount overpaid, with ~~“appropriate interest” (as that phrase is defined in section 7, above)~~ Appropriate Interest applied during the overpayment period.
- b. Notwithstanding the above, any reduction in the ~~member/payee’s~~ Member’s ongoing monthly benefit to recover overpayments will be limited to a maximum of 15% of the corrected gross monthly benefit unless the ~~member/payee~~ Member requests a higher reduction. The balance due will be paid over time, subject to this limitation.
- c. 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~~ 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~~ Member’s estate or named beneficiaries of the ~~member~~ Member; provided, however, OCERS shall not seek to recover any such remaining amounts from any continuation payments made to a surviving spouse or an optional beneficiary of the ~~member~~ Member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.
 - ~~d.i.~~ OCERS will maintain a permanent record of all amounts of such overpaid Plan benefits and the repayment to OCERS of those overpaid benefits. Every year, ~~for cases involving benefit overpayments,~~ the Director of Member Services shall provide a report to the Board for cases involving benefit overpayments.
 - ~~e.ii.~~ To the extent OCERS is unable to recoup overpaid Plan benefits from the ~~member/payee~~ Member, any shortfall will be recouped from the employer as part of the annual actuarial valuation process.

12. **Recovery of Overpaid Benefits Due to Disallowed Compensation:** Per AB 3025, and as codified in Gov. Code Section 31541.2, when OCERS "Initiated a Process" (as defined below) before January 1, 2024, to recalculate a Member's compensation earnable under Section 31461 to exclude Disallowed Compensation (as defined below) and return contributions, it may continue using that process to ensure compliance with PEPR and the holding in *Alameda County Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 (*Alameda*). When OCERS determines the reporting of Disallowed Compensation on or after January 1, 2024, the procedures to correct overpayments of benefits shall follow those contained in this Section 12.

a. Definitions:

- i. “Disallowed Compensation” means compensation reported by an employer to OCERS as pensionable compensation for a Member, that OCERS later determines is non-pensionable compensation and, therefore, not in compliance with the requirements of CERL, PEPR, the holding in *Alameda*, or OCERS Board policies and regulations through no fault of the Member. Disallowed Compensation also includes nonpensionable compensation that was previously included in an agreement.
- ii. “Initiated a Process” means that the Board has formally adopted a resolution or an administrative determination has been made to implement a correction process



OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

- requiring the collection of any portion of an overpayment from, or refunding of Member contributions to, any affected active or retired Member (or their survivor or beneficiary), or permanent adjustment to the retirement benefit of any affected active or retired Member (or their survivor or beneficiary), as a result of a determination that the Disallowed Compensation was erroneously reported as pensionable compensation by the Member's employer.
- b. For the related contribution corrections associated with the correction of overpaid benefits due to Disallowed Compensation pursuant to this Section 12, please refer to OCERS' Overpaid and Underpaid Plan Contributions Policy.
- c. For retired Members, if all three of the conditions provided in this subsection (c) are satisfied, the employer will be required to make the payments described in subsection (d) below, and OCERS will provide the written notice described in subsection (f) below:
- i. The employer reported the compensation to OCERS and made contributions on the compensation while the Member was actively employed;
 - ii. OCERS determined after the date of the Member's retirement that the compensation was Disallowed Compensation;
 - iii. The Member was not aware at the time the employer reported the compensation that it was Disallowed Compensation.
- d. Subject to subsection (c) above, the employer that reported contributions on Disallowed Compensation shall be required to pay:
- i. To OCERS, as a direct payment or through recognition in the actuarial accrued liability, as determined by OCERS, the full cost of any overpayment of the prior paid benefit made to a retired Member (or their survivor or beneficiary) resulting from the Disallowed Compensation;
 - ii. To the retired Member (or their survivor or beneficiary), an amount equal to (i) the actuarial equivalent present value of the difference between the monthly allowance that was based on the Disallowed Compensation and the adjusted monthly allowance that excludes the Disallowed Compensation, for the duration OCERS projects to pay the benefit to the retired Member (or their survivor or beneficiary), (ii) multiplied by 20%. The employer must begin payment of this amount within six (6) months of receiving the written notice from OCERS described in subsection (f) below and may have up to four (4) years to complete the payment. OCERS will charge the employer the actual costs of actuarial services necessary to determine the amount of the payment required to be made to the Member (or their survivor or beneficiary) under this section.
- e. Subject to subsection (c) above, OCERS shall provide written notice to the retired Member (or their survivor or beneficiary) and the employer, which shall include:
- i. The amount of the overpayment the employer shall pay to OCERS;



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

- ii. The actuarial equivalent present value that the employer owes to the retired Member (or their survivor or beneficiary) for the benefit payment described in subsection (d)(2) above;
- iii. Disclosure of the employer's obligations to the retired Member (or their survivor or beneficiary).
- f. Upon the employer's request, OCERS will provide the employer with contact information data in its possession of a relevant retired Member (or their survivor or beneficiary) for the employer or agency to fulfill their obligations to that retired Member (or their survivor or beneficiary) under this Policy. The employer shall keep this contact information data confidential, shall use such contact data only to the extent necessary to carry out its duties under this Policy, and such contact data shall not be disclosable under the California Public Records Act.

Policy Procedures for Underpaid Benefits

13. ~~12.~~ 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~~ Member, the Member shall be entitled to a prospective adjustment to ~~his or her~~ their retirement benefits to reflect the correct benefit amount. In addition, except as provided in Section ~~14, 15~~ below, the ~~member~~ Member will be entitled to a lump sum payment for all past amounts owed ~~as a result of~~ due to the error, with interest compounded annually at the rate of 3%. The payment shall be made as soon as administratively feasible.
14. ~~13.~~ If a ~~member~~ Member who was underpaid benefits has died ~~prior to~~ before payment of the lump sum amount due, the payment, including interest, will be made according to OCERS' standard procedures for paying residual amounts following the death of the ~~member~~ Member, e.g., to the designated beneficiary, estate, personal representative, trustee of the ~~member~~ Member trust, etc.).
- a. If, after following its standard procedures and applicable IRS guidance, Plan staff has not been able to 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.
15. ~~14.~~ If the total amount that the Plan owes to the ~~member~~ Member is \$75 or less, the Plan is not required to make the corrective distribution if, in the judgment of the CEO in consultation with legal counsel, the reasonable direct costs of processing and delivering the distribution to the ~~member~~ Member would exceed the amount of the distribution.



OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

Administrative Review

~~15.16.~~ A ~~member/payee~~ Member may request administrative review of any decision regarding corrective actions that the Plan takes with respect to recovering ~~and/or~~ returning over and underpayments of plan benefits.

The review process will generally follow the same pattern as the review process for benefit determinations ~~pursuant to~~ under the Board's Administrative Review and Hearings Policy.

- a. Overpayment collection efforts will be stayed, but benefits will be prospectively adjusted to prevent additional overpayments, during the pendency of the administrative review process; provided, however, that the Board shall have the discretion to suspend implementing its recovery from the ~~member~~ Member in whole or in part during any ensuing court action.- Interest will continue to accrue on all amounts owed to OCERS during the administrative review process and litigation.

Policy Review

~~16.17.~~ The Board will review this policy at least every three (3) years to ensure ~~that~~ it remains relevant and appropriate.

Policy History

~~17.18.~~ This policy was adopted by the Board of Retirement on May 16, 2016 and amended on October 21, 2019, November 15, 2021, and _____, ~~2021~~, [date].

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

~~11-15-2021~~

Date



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. 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 ("IRS") 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.
2. In the event that an overpayment is the result of a felony conviction, OCERS Administrative Procedure (OAP) on *Felony Forfeitures* shall be used as a basis for resolution, instead of this Policy.

Policy Objectives

3. Members and their survivors, beneficiaries, or payees (herein referred to as "Members") have a right to accurate retirement 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 they are entitled to receive.
4. 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 to prevent additional overpayments or underpayments and will pay to the Member in a lump sum or collect from the Member through lump sum or installment payments, the amounts to which the Member or the Plan is entitled per this policy and applicable law.
5. 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: (1) recover from a Member the amount of overpaid Plan benefits and/or (2) remit to a Member the amount of underpaid Plan benefits.

Policy Guidelines

6. The procedures described in this Policy are designed for use when calculation and other errors affect an individual Member's retirement benefits. For corrections of errors affecting the overpayment of individual Member's retirement benefits identified on or after 2024, the correction process to be implemented shall be consistent with the requirements of Government Code § 31541.2, as outlined in Section 15 below.
7. 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. The determination by the Board of a correction process to be implemented shall be consistent with the requirements of Government Code § 31541.2, as outlined in Section 12 below.



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

8. In the event of any inconsistency between applicable law (including IRS rules and guidance) and this Policy, the law shall govern.

Policy Procedures for Overpaid Benefits

9. The procedures for recouping overpaid benefits shall depend on whether the overpayment was a result of the Member's employer's reporting of "Disallowed Compensation" as that term is defined in Government Code § 31541.2., or otherwise.
10. **Recovery of Overpaid Benefits Unrelated to Disallowed Compensation.** When an overpayment of Plan benefits is discovered after the Member or payee's initial benefit payment, OCERS will first adjust the benefit payment prospectively to reflect the correct benefit amount and to prevent additional overpayments. OCERS will also take all reasonable steps to recover the full amount of all overpayments, going back to the inception of the error, and recouping "appropriate interest," as defined in subdivision (a) below, during the period when the benefit overpayments occurred and throughout any repayment period, i.e., interest will apply to the outstanding amount due until fully repaid. No interest will be collected when OCERS discovers the overpayment within ninety (90) days of the payment.
- a. **Appropriate Interest.**
 - i. "Appropriate Interest" is an interest amount determined using the System's actuarially assumed rate of return as of the date OCERS sets to commence repayment.
 - ii. In cases where OCERS determines there is evidence that the benefit overpayment resulted from fraud or dishonest conduct by the Member or because the Member provided, or caused to be provided, inaccurate information to OCERS or the Member's employer, then Appropriate Interest shall be recouped directly from the Member.
 - iii. In cases other than those described above in subdivision (a)(ii), Appropriate Interest shall be recouped from the Member's employer as part of the annual actuarial valuation process.
 - b. **Recovery Threshold.** The Board believes cost-effectiveness considerations make it prudent and reasonable to pursue recovery of overpaid benefits only where the cumulative total amount of overpaid benefits is \$250 or more. Accordingly, OCERS is authorized not to seek recovery of any such overpaid benefits where the total amount overpaid to the Member is less than \$250.
 - c. **Time Period for Installment Payments.** When recovering benefit overpayments, the following apply:
 - i. **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.
 - ii. **Chief Executive Officer (CEO):** 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



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

Member's installment payments to a period not exceeding the expected lifetime of the Member as determined by the actuary.

- d. *Compromising claims:* The amount of the Plan's claim for overpaid benefits is the difference between the amounts actually paid to the Member during the overpayment period and the amounts that should have been paid, together with Appropriate Interest from the dates of the actual overpayments 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 with the Member. Compromising such claim may include a different method of repayment than is otherwise provided by this Policy, including the forgiveness or partial forgiveness of principal or interest, subject to applicable IRS rules and guidance.
 - i. 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.
 - ii. Only the Board may compromise claims with Members in which the total amount of such overpaid benefits, not including interest, is greater than \$1,000.
- 11. *Recovery Procedures:* The Board adopts the following procedures for accomplishing the recovery of overpaid Plan benefits:
 - a. Upon discovery of the benefit overpayment, OCERS will notify the Member by certified mail, return receipt requested, or by express delivery service. Subject to the provisions of this Policy, the letter will provide the following information to the Member regarding the overpaid benefits:
 - i. Notice of the prospective adjustment to the benefit payment (to reflect the correct amount);
 - ii. A request for 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, or if a repayment plan for a longer period is needed due to the limitation described in section 10 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" applied during the repayment period; and
 - *Option 2* – lump sum payment to the Plan for the full amount overpaid, with Appropriate Interest applied during the overpayment period.
 - b. Notwithstanding the above, any reduction in the Member's ongoing monthly benefit to recover overpayments will be limited to a maximum of 15% of the corrected gross monthly benefit unless the Member requests a higher reduction. The balance due will be paid over time, subject to this limitation.



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

- c. 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 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.
 - i. OCERS will maintain a permanent record of all amounts of such overpaid Plan benefits and the repayment to OCERS of those overpaid benefits. Every year, the Director of Member Services shall provide a report to the Board for cases involving benefit overpayments.
 - ii. To the extent OCERS is unable to recoup overpaid Plan benefits from the Member, any shortfall will be recouped from the employer as part of the annual actuarial valuation process.
12. **Recovery of Overpaid Benefits Due to Disallowed Compensation:** Per AB 3025, and as codified in Gov. Code Section 31541.2, when OCERS "Initiated a Process" (as defined below) before January 1, 2024, to recalculate a Member's compensation earnable under Section 31461 to exclude Disallowed Compensation (as defined below) and return contributions, it may continue using that process to ensure compliance with PEPPRA and the holding in *Alameda County Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 (*Alameda*). When OCERS determines the reporting of Disallowed Compensation on or after January 1, 2024, the procedures to correct overpayments of benefits shall follow those contained in this Section 12.
- a. Definitions:
 - i. "Disallowed Compensation" means compensation reported by an employer to OCERS as pensionable compensation for a Member, that OCERS later determines is non-pensionable compensation and, therefore, not in compliance with the requirements of CERL, PEPPRA, the holding in *Alameda*, or OCERS Board policies and regulations through no fault of the Member. Disallowed Compensation also includes nonpensionable compensation that was previously included in an agreement.
 - ii. "Initiated a Process" means that the Board has formally adopted a resolution or an administrative determination has been made to implement a correction process requiring the collection of any portion of an overpayment from, or refunding of Member contributions to, any affected active or retired Member (or their survivor or beneficiary), or permanent adjustment to the retirement benefit of any affected active or retired Member (or their survivor or beneficiary), as a result of a determination that the Disallowed Compensation was erroneously reported as pensionable compensation by the Member's employer.



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

- b. For the related contribution corrections associated with the correction of overpaid benefits due to Disallowed Compensation pursuant to this Section 12, please refer to OCERS' Overpaid and Underpaid Plan Contributions Policy.
- c. For retired Members, if all three of the conditions provided in this subsection (c) are satisfied, the employer will be required to make the payments described in subsection (d) below, and OCERS will provide the written notice described in subsection (f) below:
 - i. The employer reported the compensation to OCERS and made contributions on the compensation while the Member was actively employed;
 - ii. OCERS determined after the date of the Member's retirement that the compensation was Disallowed Compensation;
 - iii. The Member was not aware at the time the employer reported the compensation that it was Disallowed Compensation.
- d. Subject to subsection (c) above, the employer that reported contributions on Disallowed Compensation shall be required to pay:
 - i. To OCERS, as a direct payment or through recognition in the actuarial accrued liability, as determined by OCERS, the full cost of any overpayment of the prior paid benefit made to a retired Member (or their survivor or beneficiary) resulting from the Disallowed Compensation;
 - ii. To the retired Member (or their survivor or beneficiary), an amount equal to (i) the actuarial equivalent present value of the difference between the monthly allowance that was based on the Disallowed Compensation and the adjusted monthly allowance that excludes the Disallowed Compensation, for the duration OCERS projects to pay the benefit to the retired Member (or their survivor or beneficiary), (ii) multiplied by 20%. The employer must begin payment of this amount within six (6) months of receiving the written notice from OCERS described in subsection (f) below and may have up to four (4) years to complete the payment. OCERS will charge the employer the actual costs of actuarial services necessary to determine the amount of the payment required to be made to the Member (or their survivor or beneficiary) under this section.
- e. Subject to subsection (c) above, OCERS shall provide written notice to the retired Member (or their survivor or beneficiary) and the employer, which shall include:
 - i. The amount of the overpayment the employer shall pay to OCERS;
 - ii. The actuarial equivalent present value that the employer owes to the retired Member (or their survivor or beneficiary) for the benefit payment described in subsection (d)(2) above;
 - iii. Disclosure of the employer's obligations to the retired Member (or their survivor or beneficiary).



OCERS Board Policy

Overpaid and Underpaid Plan Benefits Policy

- f. Upon the employer's request, OCERS will provide the employer with contact information data in its possession of a relevant retired Member (or their survivor or beneficiary) for the employer or agency to fulfill their obligations to that retired Member (or their survivor or beneficiary) under this Policy. The employer shall keep this contact information data confidential, shall use such contact data only to the extent necessary to carry out its duties under this Policy, and such contact data shall not be disclosable under the California Public Records Act.

Policy Procedures for Underpaid Benefits

- 13. When the Plan has underpaid benefits to the Member, the Member shall be entitled to a prospective adjustment to their retirement benefits to reflect the correct benefit amount. In addition, except as provided in Section 15 below, the Member will be entitled to a lump sum payment for all past amounts owed due to the error, with interest compounded annually at the rate of 3%. The payment shall be made as soon as administratively feasible.
- 14. If a Member who was underpaid benefits has died before payment of the lump sum amount due, the payment, including interest, 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 and applicable IRS guidance, Plan staff has not been able to 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 outstanding refunds of underpaid benefits and any amounts transferred into the pension reserve fund.
- 15. 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, in the judgment of the CEO in consultation with legal counsel, the reasonable direct costs of processing and delivering the distribution to the Member would exceed the amount of the distribution.

Administrative Review

- 16. A Member may request administrative review of any decision regarding corrective actions that the Plan takes with respect to recovering or returning over and underpayments of plan benefits.

The review process will generally follow the same pattern as the review process for benefit determinations under the Board's Administrative Review and Hearings Policy.

- a. Overpayment collection efforts will be stayed, but benefits will be prospectively adjusted to prevent additional overpayments during the pendency of the administrative review 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



OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

continue to accrue on all amounts owed to OCERS during the administrative review process and litigation.

Policy Review

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

Policy History

18. This policy was adopted by the Board of Retirement on May 16, 2016 and amended on October 21, 2019, November 15, 2021, and [date].

Secretary's Certificate

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

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

Steve Delaney
Secretary of the Board

Date



Memorandum

DATE: March 20, 2025
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel; David Kim, Assistant CEO External Operations
SUBJECT: TRIENNIAL REVIEW OF THE OVERPAID AND UNDERPAID CONTRIBUTIONS POLICY

Recommendation

Approve and recommend that the Board adopt the Overpaid and Underpaid Contributions Policy revisions.

Discussion

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

The Board adopted the Overpaid and Underpaid Contributions Policy on January 16, 2019, and most recently amended it on November 15, 2021.

Although edits have been made to rephrase the material to improve clarity and readability, the main substantive changes incorporate the requirements of AB 3025, as discussed below. Otherwise, there has been one addition to the section 10 on compromising claims:

- a. If the total amount of underpaid contributions by an active, deferred, or retired Member under Sections 7 or 8 above is \$100 or less (including interest), OCERS shall not be required to collect the underpaid contributions if, in the judgment of the CEO, in consultation with legal counsel, the costs of processing and collecting the underpaid contributions would exceed the amount owed to the Member, provided that, in the case of ongoing contributions, the contribution rate shall promptly be adjusted (increased) prospectively.

AB 3025

The California Legislature recently enacted AB 3025, which took effect on January 1, 2025, codified as Section 31541.2 of the Government Code. AB 3025 establishes new processes for county retirement systems regarding pay code review and handling overpayment corrections while introducing new notification requirements for specific corrections.

It also imposes payment obligations on participating employers for "disallowed compensation" paid to affected retired members, beneficiaries, or survivors. The statute defines "disallowed compensation" as reporting errors in which a pay item was reported as pensionable when it should have been classified as non-pensionable under the Public Employees' Pension Reform Act of 2013 ("PEPRA") and the holding of *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* ("Alameda"), without any fault on the part of the member.

According to the author of AB 3025, "[w]hen compensation is disallowed, retirees have to take a significant reduction in their monthly retirement distribution and pay the system back. This puts a massive burden on employees who dedicate their careers to public service with the promise of a secure retirement. In response, AB 3025 seeks to mitigate and rebalance the financial burden associated with correcting "disallowed

compensation" items. Thus, the employer must pay the system the full cost of any overpayment of benefits previously issued to an affected retired member, survivor, or beneficiary due to disallowed compensation. Additionally, the employer must pay the affected retired member, survivor, or beneficiary 20% of the actuarial equivalent present value of the difference between the monthly allowance that included the disallowed compensation and the corrected monthly allowance.

Some CERL systems are still undergoing Alameda corrections to eliminate "disallowed compensation," while many other CERL systems have completed their corrections. AB 3025 allows a limited exception for these prior corrections to avoid hindering these existing efforts. Specifically, AB 3025 excludes its correction procedures when a CERL system has "initiated a process" to address identified "disallowed compensation." AB 3025 defines "initiated a process" to mean a retirement system has "formally adopted a resolution or made an administrative determination for a correction process on *identified* disallowed compensation. Under the exception, a CERL system that had "initiated a process" before 2024 "may continue to use that process provided that it is consistent with PEPR, and the holding of *Alameda*."

AB 3025's correction requirements differ based on the member's status in the retirement system (i.e., whether the member is active, deferred, or retired), and it treats survivors and beneficiaries as retired members for corrections. ***It prescribes the following processes, the substance of which has been added to the Overpaid and Underpaid Plan Benefits Policy as Section 12 and to the Overpaid and Underpaid Contributions Policy as Section 15:***

Active Members

Unless OCERS has "Initiated a Process" before January 1, 2024:

OCERS will credit all employer contributions made on the disallowed compensation against future contributions to the benefit of the employer that reported the disallowed compensation.

Return any member contributions paid by, or on behalf of, that member to the member directly or indirectly through the employer.

Retired Member, Survivor, or Beneficiary

When OCERS determines that the final compensation of a retired member and that of a survivor or beneficiary was based on Disallowed Compensation, it will credit the employer contributions made on that Disallowed Compensation against future contributions for the employer that reported it. OCERS will return any member contributions paid by or on behalf of that member directly to them, and OCERS will permanently adjust the benefits of the affected retired member, survivor, or beneficiary to reflect the exclusion of the Disallowed Compensation.

Notice and Employer Obligations

Additional notice and employer payment requirements apply if all three of the following conditions are met:

1. The employer reported the compensation to the retirement system and made contributions on that compensation while the member was actively employed.
2. OCERS determined after the date of retirement that the compensation was disallowed.
3. The member was not aware that the compensation was disallowed at the time the employer reported it.

Should all three of the above conditions be met, OCERS will provide written notice to both the employer and the affected retired member, survivor, or beneficiary that includes the following information:

- The overpayment amount the employer shall pay to OCERS.

- The actuarial equivalent present value that the employer owes to the
- retired member, survivor, or beneficiary, as detailed below.
- Disclosure of the employer's obligations to the retired member, survivor, or beneficiary per this policy.

In addition, should all three of the above conditions be met, the Employer is obligated to pay the following:

Pay to OCERS, as a direct payment, or through recognition in the actuarial accrued liability, as determined by OCERS, the full cost of any overpayment of the prior paid benefit made to an affected retired member, survivor, or beneficiary resulting from the Disallowed Compensation.

The employer must pay to the affected retired member, survivor, or beneficiary 20% of the actuarial equivalent present value of the following calculation:

1. the difference between the monthly allowance that included the "Disallowed Compensation" and the newly adjusted monthly allowance that excluded it, and
2. multiplied by the duration OCERS projects to pay the benefit to the affected retired member, survivor, or beneficiary.

OCERS will charge the employer the actual costs of actuarial services necessary to make this calculation.

The employer must begin this payment within six months of notice from the retirement system and may have up to four years to complete the payment.

Disclosure of Member Information to Employer

Upon an employer's request, OCERS will provide the employer with contact information data of a relevant retired member, survivor, or beneficiary so that the employer or agency can fulfill its obligations to that retired member, survivor, or beneficiary under this policy. The employer shall keep this contact information data confidential, use such contact data only to the extent necessary to carry out its duties under this policy, and not disclose it under the California Public Records Act.

The proposed revisions are set forth in underlined/strikeout text in the attached copies of the Overpaid and Underpaid Plan Benefits and Overpaid and Underpaid Contributions Policies. Unmarked versions of the Policies are also attached for the Committee's ease of review.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



DK-Approved

David Kim
Assistant CEO, External Operations



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

Purpose and Background

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

In the event that an overpayment is the result of a felony conviction, OCERS Administrative Procedure (OAP) on Felony Forfeitures shall be used as a basis for resolution, instead of this Policy.

Policy Objectives

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

Policy Guidelines

3. As soon as practicable after discovery of overpaid or underpaid contributions and after written notification to the affected ~~member~~Members, survivors, beneficiaries, or payees (herein referred to as "Members") and employer, OCERS will (i) correct the contribution amount for active ~~members~~Members and employers prospectively; and (ii) pay or credit to, or collect from, the ~~member~~Member and credit to or collect from the employer, the amounts to which the ~~member~~Member, employer or the Plan is entitled in accordance with this policy and applicable law.
4. This policy is designed for use when calculation and other errors affect contributions made on behalf of an individual ~~member~~Member. For corrections of errors affecting the overpayment of individual Member's retirement benefits identified on or after 2024, the correction process to be implemented shall be consistent with the requirements of Government Code § 31541.2, as outlined in Section 15 below.
- ~~4.5.~~ In the event of a system-wide error that affects contributions made on behalf of multiple ~~members~~Members, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances. The determination by the Board of a correction process to be implemented shall be made consistent with the requirements of Government Code § 31541.2, as outlined in Section 15 below. In the event of any inconsistency between applicable law (including IRS rules and guidance) and these policies and procedures, the law shall govern.



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

~~5. In the event of any inconsistency between applicable law (including IRS rules and guidelines) and these policies and procedures, the law shall govern.~~

Procedures for Underpaid Contributions

Employers -

~~6. 6.~~ When an employer has underpaid plan contributions, the employer will be required to:

- a. Pay to the Plan the underpaid contributions associated with ~~member~~Member compensation earned in prior fiscal years as soon as reasonably practicable, and
- b. Pay to the Plan the underpaid contributions associated with ~~member~~Member compensation earned in the current fiscal year no later than the end of the current fiscal year.

Interest on the underpaid contributions shall be charged to and paid by the employer at the System's actuarially assumed rate of return. For purposes of this policy, underpaid employer contributions shall include any portion of underpaid ~~member~~Member contributions, to the extent the employer elected to pay such portion on behalf of a ~~member~~Member pursuant to Government Code section 31581.1. Such amounts shall be recovered from the employer under this Section 6, and not from the ~~member~~Member under Section 7 below.

Members

7. **Active Members.** ~~When~~Subject to Section 10(a) below, when an active ~~member~~Member has underpaid contributions to the Plan, OCERS will (i) make a prospective correction to (increase in) the ~~member's~~Member's contribution rate to the Plan to reflect the correct amount of ~~member~~Member contributions to the Plan ~~in order~~ to prevent additional underpaid contributions; and (ii) take all reasonable steps to recover the full amount of all underpaid contributions, going back to the inception of the error, and charge interest to the ~~member~~Member using the rate of interest credited by OCERS to ~~member~~Member contributions, compounded annually during the period in which the contributions were underpaid and during any repayment period ~~(, i.e., applied to the outstanding amount due until fully repaid).~~
 - The amount of the ~~member's~~Member's underpaid contributions for active members will be collected in accordance with section 9 below.
 - If the active ~~member~~Member retires or becomes a deferred ~~member~~Member of the Plan prior to repayment in full of the underpaid contributions, the remaining amount owing to the Plan will be collected in accordance with section 8 below.
8. **Retired and Deferred Members.** ~~When~~Subject to Section 10(a) below, when a retired or deferred ~~member~~Member has underpaid contributions to the Plan, OCERS will collect the full amount of all underpaid contributions, going back to the inception of the error, and charge interest to the ~~member~~Member using the rate of interest credited by OCERS to ~~member~~Member contributions, compounded annually during the period in which the contributions were underpaid.



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

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

~~9.~~ 9.—The Board adopts the following procedures to recover underpaid contributions by ~~members~~Members to the Plan:

- a. **For Active Members.** Upon discovery of the underpaid contributions, OCERS will notify the ~~member~~Member of the prospective adjustment to increase the ~~member's~~Member's contribution rate to the Plan (to reflect the correct amount of member contributions to the Plan) and provide the ~~member~~Member with the following two options:
 - *Option 1* – Equal pre-tax installment payments deducted from the member's biweekly salary over the same length of time that the underpaid contributions occurred, with interest as set forth in section 7 above applied during the underpayment period and during the repayment period; or
 - *Option 2* – Lump sum payment to the Plan for the full amount underpaid, with interest as set forth in section 7 above applied during the underpayment period.
- b. **For Retired and Deferred Members.** Inform the ~~member~~Member of the underpayment and provide the member with the following two options:
 - *Option 1* – Equal installments deducted from the ~~member's~~Member's monthly pension amount over a period established in the discretion of the Director of Member Services not to exceed five years; or
 - *Option 2* – Lump sum payment to the Plan for the full amount underpaid, with interest as set forth in section 8 above applied during the underpayment period.
- c. In cases of extreme hardship, the ~~member~~Member may request, and the OCERS Chief Executive Officer (CEO) may grant, a longer period of repayment of the underpaid contributions
- d. OCERS may pursue all legal remedies to collect such underpaid ~~member~~Member contributions to the Plan, including making a claim against the ~~member's~~Member's estate or trust. In addition, if the ~~member~~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~~Member's estate or named beneficiaries of the ~~member~~Member, provided, however, OCERS shall not seek to recover any such remaining amounts from any continuation payments made to a surviving spouse or an optional beneficiary of the ~~member~~Member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.

~~7.~~10. Compromising Claims.

- a. If the total amount of underpaid contributions by an active, deferred, or retired Member under Sections 7 or 8 above is \$100 or less (including interest), OCERS shall not be required to collect the underpaid contributions if, in the judgment of the CEO, in consultation with legal counsel, the costs of processing and collecting the underpaid contributions would exceed the amount



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

owed to the Member, provided that, in the case of ongoing contributions, the contribution rate shall promptly be adjusted (increased) prospectively.

- ~~a.b.~~ When the total amount of the Plan's claim against the ~~member~~Member, not including interest, is \$1,000 or less, the CEO, on the advice of legal counsel, shall have the authority to compromise the claim.
- ~~b.c.~~ Only the Board may compromise claims in which the total amount of such underpaid contributions, not including interest, is greater than \$1,000.
- ~~c.d.~~ The amount of the Plan's claim for underpaid contributions is the difference between the amounts actually paid by the ~~member during the overcontribution~~Member and the amounts that should have been paid, together with "appropriate interest" from the dates of the actual contributions 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~~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, subject to applicable IRS rules and guidance.
- ~~d.e.~~ To the extent OCERS ~~is unable to~~cannot recoup all underpaid contributions and interest from the ~~member~~Member, any shortfall will be recouped from the employer as part of the annual actuarial valuation process.

Procedures for Overpaid Contributions for Benefit Calculations Not Involving Disallowed Compensation

Employers

- ~~11.~~ ~~11.~~ When an employer has overpaid contributions to the Plan, including overpaid ~~member~~Member contributions that ~~were paid by the~~ employer paid on behalf of the ~~member~~Member pursuant to Government Code section 31581.1, the employer shall be entitled to a credit to its actuarial accrued liability in the amount necessary to correct the error, plus interest at the System's corresponding actuarial assumed rate of return.

Members

- ~~12.~~ ~~12.~~ When a ~~member~~Member has overpaid contributions to the Plan, except as provided in Section 14 below, (i) an active ~~member~~Member shall be entitled to a prospective adjustment to his or her contribution rate to reflect the correct amount, and OCERS will inform the employer of the amount of the overpayment and the employer will offset the amount against the ~~member's~~Member's future contributions via the employer's payroll system; and (ii) except as provided in Section 14 below, retired and deferred ~~members~~Members will be entitled to a lump sum payment as soon as practical ~~of after~~ discovery of the overpayment and receipt of all information needed to make the



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

correction for all past overpaid amounts, with interest compounded annually using the rate of interest credited by OCERS to ~~member~~Member contributions.

13. ~~13.~~ If a ~~member~~Member who overpaid contributions to the Plan dies prior to payment of the lump sum amount due, the payment, including interest, ~~will be made according to OCERS' standard procedures for paying residual amounts following the death of the member~~(Member, e.g., to the designated beneficiary, estate, personal representative, trustee of the ~~member~~Member trust, etc.).
- a. If, after following its standard procedures and applicable IRS guidance, Plan staff is not able locate a person entitled to payment, the Plan shall hold the funds on behalf of that person for five years. ~~If the funds are not claimed within five years, the funds may be transferred into the System's pension reserve fund. If someone later appears to claim the funds, the Board or the CEO will consider such claims on a case-by-case basis.~~
 - b. The Plan will maintain a permanent record of all amounts of outstanding refunds of overpaid contributions and any amounts that have been transferred into the pension reserve fund.
14. ~~14.~~ If the total amount that the Plan ~~owes a~~would owe an active, deferred, or retired ~~or deferred~~
~~member~~Member under Section 12(iii) above is \$75 or less, the Plan is not required to make the lump sum payment ~~to or offset the member~~amount against future contributions for the Member if, in the judgment of the CEO in consultation with legal counsel, the reasonable direct costs of processing and delivering the distribution to the ~~member~~Member would exceed the amount of the distribution.

Procedures for Overpaid Contributions on Disallowed Compensation

15. Per AB 3025, and as codified in Gov. Code Section 31541.2, when OCERS "Initiated a Process" (as defined below) before January 1, 2024, to recalculate a Member compensation earnable under Section 31461 to exclude Disallowed Compensation (as defined below) and return contributions, it may continue using that process to ensure compliance with PEPR and the holding in *Alameda County Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 (*Alameda*). When OCERS determines the reporting of Disallowed Compensation on or after January 1, 2024, the procedures to correct overpayments of benefits shall follow those contained in this Section 15.

a. Definitions:

"Disallowed Compensation" means compensation reported by an employer to OCERS as pensionable compensation for a Member, that OCERS later determines is non-pensionable compensation and, therefore, not in compliance with the requirements of CERL, PEPR, the *Alameda* holding, or OCERS Board policies and regulations through no fault of the Member. Disallowed Compensation also includes nonpensionable compensation that was previously included in an agreement.



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

"Initiated a Process" means that the Board has formally adopted a resolution or an administrative determination has been made to implement a correction process requiring the collection of any portion of an overpayment from, or refunding of Member contributions to, any affected active or retired Member (or their survivor or beneficiary), or permanent adjustment to the retirement benefit of any affected active or retired Member (or their survivor or beneficiary), as a result of a determination that the Disallowed Compensation was erroneously reported as pensionable compensation by the Member's employer.

- b. Upon OCERS' determination that Disallowed Compensation was reported for a Member, OCERS will require the employer to discontinue reporting the Disallowed Compensation.
- c. All employer contributions made on Disallowed Compensation will be credited against future contributions to the benefit of the employer who reported the Disallowed Compensation.
- d. For active and deferred Members, any Member contributions paid by or on behalf of the Member on the Disallowed Compensation will be returned to that Member, either directly or indirectly through the employer.
- e. For retired Members (or their survivors or beneficiaries) whose final compensation at the time of retirement was based on Disallowed Compensation, any Member contributions paid by or on behalf of the Member on the Disallowed Compensation will be returned directly to the Member (or their survivor or beneficiary) and OCERS will permanently adjust the benefit of the retired Member (or their survivor or beneficiary) to reflect the exclusion of the Disallowed Compensation.
- f. For the related benefit corrections associated with the corrected contributions pursuant to this Section 15 for Disallowed Compensation, please refer to OCERS' Overpaid and Underpaid Plan Benefits Policy.
- g. Upon the employer's request, OCERS will provide the employer with contact information data in its possession of a relevant retired Member (or their survivor or beneficiary) for the employer or agency to fulfill their obligations to that retired Member (or their survivor or beneficiary) under this policy. The employer shall keep this contact information data confidential, shall use such contact data only to the extent necessary to carry out its duties under this policy, and such contact data shall not be disclosable under the California Public Records Act.

Administrative Review

- ~~16. 15-~~ A memberMember may request administrative review of any decision regarding corrective actions that the Plan takes ~~with respect to recovering and/~~ to recover or ~~returning~~ return over and underpayments of Plan contributions.
- ~~17. 16-~~ The review process will generally follow the same pattern as the review process for benefit determinations pursuant to the Board's -Administrative Review and Hearing Policy. -Efforts to collect underpaid contributions- will be stayed, but contribution rates will be prospectively adjusted to prevent additional underpaid contributions, during the pendency of the review process;



OCERS Board Policy Overpaid and Underpaid Plan Contributions Policy

provided, however, that the Board shall have the discretion to suspend implementing its recovery from the ~~member~~ 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

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

Policy History

19. ~~18.~~ This policy was adopted by the Board of Retirement on January 16, 2019, and revised on ~~November 15, 2021, and~~ November 15, 2021.

Secretary's Certificate

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

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

Steve Delaney
Secretary of the Board

11/15/2021

Date



OCERS Board Policy Overpaid and Underpaid Plan Contributions Policy

Purpose and Background

1. The purpose of the Orange County Employees Retirement System ("OCERS," "System," or "Plan") *Overpaid and Underpaid Plan Contributions Policy* ("policy") is to provide a framework for resolving erroneous collection of plan contributions from OCERS Members and employers. The OCERS Board of Retirement ("Board") is responsible for 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 System's assets in a prudent manner.

In the event that an overpayment is the result of a felony conviction, OCERS Administrative Procedure (OAP) on *Felony Forfeitures* shall be used as a basis for resolution, instead of this Policy.

Policy Objectives

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

Policy Guidelines

3. As soon as practicable after discovery of overpaid or underpaid contributions and after written notification to the affected Members, survivors, beneficiaries, or payees (herein referred to as "Members") and employer, OCERS will (i) correct the contribution amount for active Members and employers prospectively; and (ii) pay or credit to, or collect from, the Member and credit to or collect from the employer, the amounts to which the Member, employer or the Plan is entitled in accordance with this policy and applicable law.
4. This policy is designed for use when calculation and other errors affect contributions made on behalf of an individual Member. For corrections of errors affecting the overpayment of individual Member's retirement benefits identified on or after 2024, the correction process to be implemented shall be consistent with the requirements of Government Code § 31541.2, as outlined in Section 15 below.
5. In the event of a system-wide error that affects contributions made on behalf of multiple Members, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances. The determination by the Board of a correction process to be implemented shall be made consistent with the requirements of Government Code § 31541.2, as outlined in Section 15 below. In the event of any inconsistency between applicable law (including IRS rules and guidance) and these policies and procedures, the law shall govern.



OCERS Board Policy Overpaid and Underpaid Plan Contributions Policy

Procedures for Underpaid Contributions

Employers

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

Interest on the underpaid contributions shall be charged to and paid by the employer at the System's actuarially assumed rate of return. For purposes of this policy, underpaid employer contributions shall include any portion of underpaid Member contributions to the extent the employer elected to pay such portion on behalf of a Member pursuant to Government Code section 31581.1. Such amounts shall be recovered from the employer under this Section 6, and not from the Member under Section 7 below.

Members

7. **Active Members.** Subject to Section 10(a) below, when an active Member has underpaid contributions to the Plan, OCERS will (i) make a prospective correction to (increase in) the Member's contribution rate to the Plan to reflect the correct amount of Member contributions to the Plan to prevent additional underpaid contributions; and (ii) take all reasonable steps to recover the full amount of all underpaid contributions, going back to the inception of the error, and charge interest to the Member using the rate of interest credited by OCERS to Member contributions, compounded annually during the period in which the contributions were underpaid and during any repayment period, i.e., applied to the outstanding amount due until fully repaid.

- The amount of the Member's underpaid contributions for active members will be collected in accordance with section 9 below.
- If the active Member retires or becomes a deferred Member of the Plan prior to repayment in full of the underpaid contributions, the remaining amount owing to the Plan will be collected in accordance with section 8 below.

8. **Retired and Deferred Members.** Subject to Section 10(a) below, when a retired or deferred Member has underpaid contributions to the Plan, OCERS will collect the full amount of all underpaid contributions, going back to the inception of the error, and charge interest to the Member using the rate of interest credited by OCERS to Member contributions, compounded annually during the period in which the contributions were underpaid.

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

9. The Board adopts the following procedures to recover underpaid contributions by Members to the Plan:



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

- a. **For Active Members.** Upon discovery of the underpaid contributions, OCERS will notify the Member of the prospective adjustment to increase the Member's contribution rate to the Plan (to reflect the correct amount of member contributions to the Plan) and provide the Member with the following two options:
 - *Option 1* – Equal pre-tax installment payments deducted from the member's biweekly salary over the same length of time that the underpaid contributions occurred, with interest as set forth in section 7 above applied during the underpayment period and during the repayment period; or
 - *Option 2* – Lump sum payment to the Plan for the full amount underpaid, with interest as set forth in section 7 above applied during the underpayment period.
 - b. **For Retired and Deferred Members.** Inform the Member of the underpayment and provide the member with the following two options:
 - *Option 1* – Equal installments deducted from the Member's monthly pension amount over a period established in the discretion of the Director of Member Services not to exceed five years; or
 - *Option 2* – Lump sum payment to the Plan for the full amount underpaid, with interest as set forth in section 8 above applied during the underpayment period.
 - c. In cases of extreme hardship, the Member may request, and the OCERS Chief Executive Officer (CEO) may grant, a longer period of repayment of the underpaid contributions
 - d. OCERS may pursue all legal remedies to collect such underpaid Member contributions to the Plan, including making a claim against the Member's estate or trust. In addition, if the Member dies before the full amount of principal and interest is paid, OCERS may recover the remaining principal and interest from any lump sum amount OCERS is obligated to pay to the Member's estate or named beneficiaries of the Member, provided, however, OCERS shall not seek to recover any such remaining amounts from any continuation payments made to a surviving spouse or an optional beneficiary of the Member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.
10. Compromising Claims.
- a. If the total amount of underpaid contributions by an active, deferred, or retired Member under Sections 7 or 8 above is \$100 or less (including interest), OCERS shall not be required to collect the underpaid contributions if, in the judgment of the CEO, in consultation with legal counsel, the costs of processing and collecting the underpaid contributions would exceed the amount owed to the Member, provided that, in the case of ongoing contributions, the contribution rate shall promptly be adjusted (increased) prospectively.
 - b. 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 Contributions Policy

- c. Only the Board may compromise claims in which the total amount of such underpaid contributions, not including interest, is greater than \$1,000.
- d. The amount of the Plan's claim for underpaid contributions is the difference between the amounts actually paid by the Member and the amounts that should have been paid, together with "appropriate interest" from the dates of the actual contributions 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, subject to applicable IRS rules and guidance.
- e. To the extent OCERS cannot recoup all underpaid contributions and interest from the Member, any shortfall will be recouped from the employer as part of the annual actuarial valuation process.

Procedures for Overpaid Contributions for Benefit Calculations Not Involving Disallowed Compensation

Employers

- 11. When an employer has overpaid contributions to the Plan, including overpaid Member contributions that the employer paid on behalf of the Member pursuant to Government Code section 31581.1, the employer shall be entitled to a credit to its actuarial accrued liability in the amount necessary to correct the error, plus interest at the System's corresponding actuarial assumed rate of return.

Members

- 12. When a Member has overpaid contributions to the Plan, except as provided in Section 14 below, (i) an active Member shall be entitled to a prospective adjustment to his or her contribution rate to reflect the correct amount, and OCERS will inform the employer of the amount of the overpayment and the employer will offset the amount against the Member's future contributions via the employer's payroll system; and (ii) except as provided in Section 14 below, retired and deferred Members will be entitled to a lump sum payment as soon as practical after discovery of the overpayment and receipt of all information needed to make the correction for all past overpaid amounts, with interest compounded annually using the rate of interest credited by OCERS to Member contributions.
- 13. If a Member who overpaid contributions to the Plan dies prior to payment of the lump sum amount due, the payment, including interest, 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.



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

- a. If, after following its standard procedures and applicable IRS guidance, Plan staff is not able locate a person entitled to payment, the Plan shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the System's pension reserve fund. If someone later appears to claim the funds, the Board or the CEO will consider such claims on a case-by-case basis.
 - b. The Plan will maintain a permanent record of all amounts of outstanding refunds of overpaid contributions and any amounts that have been transferred into the pension reserve fund.
14. If the total amount that the Plan would owe an active, deferred, or retired Member under Section 12 above is \$75 or less, the Plan is not required to make the lump sum payment or offset the amount against future contributions for the Member if, in the judgment of the CEO in consultation with legal counsel, the reasonable direct costs of processing and delivering the distribution to the Member would exceed the amount of the distribution.

Procedures for Overpaid Contributions on Disallowed Compensation

15. Per AB 3025, and as codified in Gov. Code Section 31541.2, when OCERS "Initiated a Process" (as defined below) before January 1, 2024, to recalculate a Member compensation earnable under Section 31461 to exclude Disallowed Compensation (as defined below) and return contributions, it may continue using that process to ensure compliance with PEPPRA and the holding in *Alameda County Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 (*Alameda*). When OCERS determines the reporting of Disallowed Compensation on or after January 1, 2024, the procedures to correct overpayments of benefits shall follow those contained in this Section 15.
 - a. Definitions:

"Disallowed Compensation" means compensation reported by an employer to OCERS as pensionable compensation for a Member, that OCERS later determines is non-pensionable compensation and, therefore, not in compliance with the requirements of CERL, PEPPRA, the *Alameda* holding, or OCERS Board policies and regulations through no fault of the Member. Disallowed Compensation also includes nonpensionable compensation that was previously included in an agreement.

"Initiated a Process" means that the Board has formally adopted a resolution or an administrative determination has been made to implement a correction process requiring the collection of any portion of an overpayment from, or refunding of Member contributions to, any affected active or retired Member (or their survivor or beneficiary), or permanent adjustment to the retirement benefit of any affected active or retired Member (or their survivor or beneficiary), as a result of a determination that the Disallowed Compensation was erroneously reported as pensionable compensation by the Member's employer.
 - b. Upon OCERS' determination that Disallowed Compensation was reported for a Member, OCERS will require the employer to discontinue reporting the Disallowed Compensation.



OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

- c. All employer contributions made on Disallowed Compensation will be credited against future contributions to the benefit of the employer who reported the Disallowed Compensation.
- d. For active and deferred Members, any Member contributions paid by or on behalf of the Member on the Disallowed Compensation will be returned to that Member, either directly or indirectly through the employer.
- e. For retired Members (or their survivors or beneficiaries) whose final compensation at the time of retirement was based on Disallowed Compensation, any Member contributions paid by or on behalf of the Member on the Disallowed Compensation will be returned directly to the Member (or their survivor or beneficiary) and OCERS will permanently adjust the benefit of the retired Member (or their survivor or beneficiary) to reflect the exclusion of the Disallowed Compensation.
- f. For the related benefit corrections associated with the corrected contributions pursuant to this Section 15 for Disallowed Compensation, please refer to OCERS' Overpaid and Underpaid Plan Benefits Policy.
- g. Upon the employer's request, OCERS will provide the employer with contact information data in its possession of a relevant retired Member (or their survivor or beneficiary) for the employer or agency to fulfill their obligations to that retired Member (or their survivor or beneficiary) under this policy. The employer shall keep this contact information data confidential, shall use such contact data only to the extent necessary to carry out its duties under this policy, and such contact data shall not be disclosable under the California Public Records Act.

Administrative Review

- 16. A Member may request administrative review of any decision regarding corrective actions that the Plan takes to recover or return over and underpayments of Plan contributions.
- 17. The review process will generally follow the same pattern as the review process for benefit determinations pursuant to the Board's Administrative Review and Hearing Policy. Efforts to collect underpaid contributions will be stayed, but contribution rates will be prospectively adjusted to prevent additional underpaid contributions, during the pendency of the review 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

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



OCERS Board Policy Overpaid and Underpaid Plan Contributions Policy

Policy History

19. This policy was adopted by the Board of Retirement on January 16, 2019, and revised on November 15, 2021, and _____.

Secretary's Certificate

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

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

Steve Delaney
Secretary of the Board

Date



Memorandum

DATE: March 20, 2025
TO: Members of the Governance Committee
FROM: David Kim, Assistant CEO External Operations; Manuel D. Serpa, General Counsel
SUBJECT: OFF-CYCLE REVIEW OF THE PAY ITEM REVIEW POLICY

Recommendation

Approve and recommend that the Board adopt the Pay Item Review Policy revisions.

Discussion

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

The Board adopted the Pay Item Review Policy on March 18, 2019, and most recently amended it on December 9, 2024. **Although not scheduled for review, changes to the policy are necessitated by Assembly Bill 3025 ("AB 3025").**

The California Legislature recently enacted AB 3025, which went into effect on January 1, 2025, codified as Section 31541.2 of the Government Code. AB 3025 establishes new processes for county retirement systems in pay code review and handling overpayment corrections and introduces new notification requirements for certain corrections. AB 3025 seeks to mitigate and rebalance the financial burden associated with correcting "disallowed compensation" items similarly to what is done in the CalPERS retirement system.

To avoid needing to correct "disallowed compensation," AB 3025 provides for a pay code review process to determine pensionability while the pay code is being considered in contract negotiation. Starting 2025, employers and authorized employee representatives may request that a CERL system review a new or additional pay item for pensionability during the employer-union collective bargaining negotiations. If such a request is made, the requesting party must submit all required documentation that the CERL system deems necessary to decide, and the CERL system must provide written guidance within 90 days after receiving the necessary information for review.

Pay Item Request and Approval Procedures for Employers

There is a procedure document that explains to employers how to submit pay items for review entitled "Pay Item Request and Approval Procedures for Employers." Staff will revise this procedure document to align with the changes to the policy.

Proposed Revisions

The Policy revisions add language necessary to comply with AB 3025 and rephrase some of the material to improve clarity and readability. The new requirement for OCERS to provide written guidance upon employer request during contract negotiations is contained in new paragraphs 11-13 as follows:

11. Pursuant to Government Code section 31541.2(c)(1), an employer or authorized employee representative may request OCERS' review of a proposed new or modified pay item/pay code intended to be included in a proposed employment agreement to determine the

pensionability under the CERL, PEPR, the *Alameda* holding, and OCERS regulations and policies prior to the entry of the employment agreement. Each such submission to OCERS must include all supporting information OCERS deems necessary to perform its review.

12. OCERS staff will evaluate each proposed pay item/pay code under Paragraph 11 and provide guidance to the requestor in writing on whether the proposed pay item/paycode is pensionable within 90 days of the receipt of all information OCERS requires to perform its review.
13. Employers must submit all new or modified pay codes for pay items for review and approval by OCERS, per paragraph 4, regardless of whether written guidance has been provided on a proposed pay item or pay code under paragraph 11.

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

Attachments

Submitted by:



DK-Approved

David Kim

Assistant CEO, External Operations



MDS-Approved

Manuel D. Serpa

General Counsel



OCERS Board Policy

Pay Item Review Policy

Purpose and Background

1. ~~The purpose of this~~This policy ~~is to set~~sets forth a procedure for ~~the submittal~~submitting and ~~approval of~~approving pay items by OCERS participating employers. Its purpose is to assist OCERS in properly and timely determining whether elements of compensation are appropriately treated as Compensation Earnable (for Legacy ~~Member~~Members) or Pensionable Compensation (for PEPR members). ~~before a pay code for a pay item goes into use and to correct pay codes to accurately reflect pensionability.~~

Policy Objectives

2. The objectives of this policy are: (1) to comply with the requirements of the County Employees Retirement Law (CERL; California Government Code Title 3, Part 3, Chapters 3 & 3.9), as amended by the Public Employees Pension Reform Act (PEPRA; California Government Code sections 7522 - 7522.74) and, the holding in the California Supreme Court case of Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032 ("Alameda"), and OCERS' regulations and policies, and (2) to ensure OCERS' effective assessment and determination of whether an element of compensation is properly categorized for purposes of collecting contributions and including in the calculation of final average salary.

Policy Guidelines

Per AB 3025, employers may face significant financial consequences if they report compensation that OCERS later finds non-compliant with the CERL, PEPRA, the Alameda ruling, or OCERS Board policies and regulations, provided this is not the Member's fault. Detailed information regarding these potential consequences can be found in OCERS' policies on "Overpaid and Underpaid Plan Benefits" and "Overpaid and Underpaid Contributions."

Review of Pay Items

3. OCERS ~~shall~~will not accept any new or modified pay items from employers for processing contributions and reporting compensation until each pay ~~item~~item's pay code has been reviewed by OCERS staff and approved by the CEO or ~~his/her~~their designee for inclusion ~~as~~, or exclusion from, Compensation Earnable for Legacy members and Pensionable Compensation for PEPR members. ~~OCERS staff, under the direction of the CEO and with the assistance of OCERS legal counsel, the General Counsel, is responsible for implementing this Policy. OCERS staff will analyze each pay item to determine whether each meets the definition of Compensation Earnable or Pensionable Compensation. Unless appealed, the CEO's determination shall be final.~~
4. Employers are responsible for notifying OCERS of new or modified pay ~~items~~code item(s) for sufficient review and approval ~~sufficiently in advance of implementation of the items, before implementing them.~~ Failure to do so may result in OCERS imposing costs on the employer ~~in accordance with~~per Government Code ~~section~~sections 31580.1, 31542.5, or 31541.2(b)(2)(B).
5. OCERS staff will analyze each pay code item to determine whether each meets the Compensation Earnable or Pensionable Compensation definition and complies with the CERL, PEPRA, the Alameda



OCERS Board Policy

Pay Item Review Policy

holding, and OCERS regulations and policies. Unless appealed, the CEO's determination shall be final.

6. As a part of its review process, OCERS staff will review employer pay ~~item~~code item listings for compliance with this Policy. -When reviewing ~~items of~~ compensation and pay code items, OCERS will audit pay code items to determine whether each ~~of them~~ meets the applicable statutory definitions and applicable Board Policies for pensionability and complies with OCERS' regulations and policies.
67. After concluding the foregoing assessment, OCERS staff shall send written notification to the employer of the staff's determination, including the specific supporting facts, circumstances, reasoning, and analyses.
78. The employer shall have 30 calendar days from the date of staff's final notice of determination ~~within which~~ to appeal the staff determination to the Board ~~of Retirement (Board)~~. If the employer accepts staff's determination, or ~~if does not file~~ a timely appeal ~~it to the Board is not filed~~, the matter shall be deemed concluded ~~and~~, the staff determination shall be final, and the employer shall comply with the determination.
89. Upon receipt of a timely request for appeal to the Board of staff's determination, staff shall place the matter on a future Board agenda and ~~shall~~ prepare a written report to the Board making a recommendation to the Board on the pay ~~items~~code item(s) in question. Staff shall provide the employer with advance notice of the Board meeting and a copy of staff's report and all materials to be considered by the Board, ~~and likewise~~. Likewise, the employer shall provide OCERS with all materials it intends to submit to the Board.
910. The Board shall consider ~~the~~ all written materials submitted ~~as well as~~and any arguments ~~presented by the employer, and OCERS staff present~~. The Board shall then ~~make a decision as to~~ decide whether the pay code item qualifies as Compensation Earnable ~~or~~, Pensionable Compensation, or both, ~~which~~. The decision shall be final, and the employer shall comply with the Board's determination.

Review of Potential New or Modified Pay Code Items During Employment Contract Negotiations

11. Pursuant to Government Code section 31541.2(c)(1), an employer or authorized employee representative may request OCERS' review of a proposed new or modified pay item/pay code intended to be included in a proposed employment agreement to determine the pensionability under the CERL, PEPR, the Alameda holding, and OCERS regulations and policies prior to the entry of the employment agreement. Each such submission to OCERS must include all supporting information OCERS deems necessary to perform its review.
12. OCERS staff will evaluate each proposed pay item/pay code under Paragraph 11 and provide guidance to the requestor in writing on whether the proposed pay item/paycode is pensionable within 90 days of the receipt of all information OCERS requires to perform its review.
13. Employers must submit all new or modified pay codes for pay items for review and approval by OCERS, per paragraph 4, regardless of whether written guidance has been provided on a proposed pay item or pay code under paragraph 11.



OCERS Board Policy Pay Item Review Policy

Policy Review

~~10.~~14. The Board shall review this policy at least every three (3) years to ensure ~~that~~ it remains relevant and appropriate.

Policy History

15. The Board adopted this policy on March 18, 2019, and revised it on June 20, 2022~~-, December 9,~~
2024, and .

~~11.~~

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". The signature is written over a horizontal line.

Steve Delaney
Secretary of the Board

06/20/2022

Date



OCERS Board Policy Pay Item Review Policy

Purpose and Background

1. This policy sets forth a procedure for submitting and approving pay items by OCERS participating employers. Its purpose is to assist OCERS in properly and timely determining whether elements of compensation are appropriately treated as Compensation Earnable (for Legacy Members) or Pensionable Compensation (for PEPRA members) before a pay code for a pay item goes into use and to correct pay codes to accurately reflect pensionability.

Policy Objectives

2. The objectives of this policy are: (1) to comply with the requirements of the County Employees Retirement Law (CERL; California Government Code Title 3, Part 3, Chapters 3 & 3.9), as amended by the Public Employees Pension Reform Act (PEPRA; California Government Code sections 7522 - 7522.74), the holding in the California Supreme Court case of *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 ("*Alameda*"), and OCERS' regulations and policies, and (2) to ensure OCERS' effective assessment and determination of whether an element of compensation is properly categorized for purposes of collecting contributions and including in the calculation of final average salary.

Per AB 3025, employers may face significant financial consequences if they report compensation that OCERS later finds non-compliant with the CERL, PEPRA, the Alameda ruling, or OCERS Board policies and regulations, provided this is not the Member's fault. Detailed information regarding these potential consequences can be found in OCERS' policies on "Overpaid and Underpaid Plan Benefits" and "Overpaid and Underpaid Contributions."

Review of Pay Items

3. OCERS will not accept any new or modified pay items from employers for processing contributions and reporting compensation *until* each pay item's pay code has been reviewed by OCERS staff and approved by the CEO or their designee for inclusion or exclusion from Compensation Earnable for Legacy members and Pensionable Compensation for PEPRA members. OCERS staff, under the direction of the CEO and with the assistance of the General Counsel, is responsible for implementing this Policy.
4. Employers are responsible for notifying OCERS of new or modified pay code item(s) for sufficient review and approval before implementing them. Failure to do so may result in OCERS imposing costs on the employer per Government Code sections 31580.1, 31542.5, or 31541.2(b)(2)(B).
5. OCERS staff will analyze each pay code item to determine whether each meets the Compensation Earnable or Pensionable Compensation definition and complies with the CERL, PEPRA, the *Alameda* holding, and OCERS regulations and policies. Unless appealed, the CEO's determination shall be final.
6. As a part of its review process, OCERS staff will review employer pay code item listings for compliance with this Policy. When reviewing compensation and pay code items, OCERS will audit pay code items to determine whether each meets the applicable statutory definitions for pensionability and complies with OCERS' regulations and policies.



OCERS Board Policy

Pay Item Review Policy

7. After concluding the foregoing assessment, OCERS staff shall send written notification to the employer of the staff's determination, including the specific supporting facts, circumstances, reasoning, and analyses.
8. The employer shall have 30 calendar days from the date of staff's final notice of determination to appeal the staff determination to the Board of Retirement (Board). If the employer accepts staff's determination or does not file a timely appeal, the matter shall be deemed concluded, the staff determination shall be final, and the employer shall comply with the determination.
9. Upon receipt of a timely request for appeal to the Board of staff's determination, staff shall place the matter on a future Board agenda and prepare a written report to the Board making a recommendation to the Board on the pay code item(s) in question. Staff shall provide the employer with advance notice of the Board meeting and a copy of staff's report and all materials to be considered by the Board. Likewise, the employer shall provide OCERS with all materials it intends to submit to the Board.
10. The Board shall consider all written materials submitted and any arguments the employer and OCERS staff present. The Board shall then decide whether the pay code item qualifies as Compensation Earnable, Pensionable Compensation, or both. The decision shall be final, and the employer shall comply with the Board's determination.

Review of Potential New or Modified Pay Code Items During Employment Contract Negotiations

11. Pursuant to Government Code section 31541.2(c)(1), an employer or authorized employee representative may request OCERS' review of a proposed new or modified pay item/pay code intended to be included in a proposed employment agreement to determine the pensionability under the CERL, PEPR, the *Alameda* holding, and OCERS regulations and policies prior to the entry of the employment agreement. Each such submission to OCERS must include all supporting information OCERS deems necessary to perform its review.
12. OCERS staff will evaluate each proposed pay item/pay code under Paragraph 11 and provide guidance to the requestor in writing on whether the proposed pay item/paycode is pensionable within 90 days of the receipt of all information OCERS requires to perform its review.
13. Employers must submit all new or modified pay codes for pay items for review and approval by OCERS, per paragraph 4, regardless of whether written guidance has been provided on a proposed pay item or pay code under paragraph 11.

Policy Review

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

Policy History

15. The Board adopted this policy on March 18, 2019, and revised it on June 20, 2022, December 9, 2024, and .



OCERS Board Policy Pay Item Review Policy

Secretary's Certificate

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

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

Steve Delaney
Secretary of the Board

Date



Memorandum

DATE: March 20, 2025
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel
SUBJECT: TRIENNIAL REVIEW OF THE INDEMNITY AND DEFENSE POLICY

Recommendation

Approve and recommend that the Board adopt minor revisions to the Indemnity and Defense Policy.

Background/Discussion

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

The Board adopted the Indemnity and Defense Policy on April 16, 2007, and most recently amended it on June 20, 2022. It is scheduled for review and approval by the Board after review by the Governance Committee in 2025.

The proposed revisions to the Policy are non-substantive; minor edits are aimed at eliminating unnecessary verbiage and typos and rephrasing the material to improve clarity and readability. The proposed revisions are set forth in the attached redline copy of the Policy. An unmarked version of the Policy is also attached for the Committee's ease of review.

Attachments

Submitted by:



MDS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Indemnity and Defense Policy

Authority and Purpose

OCERS typically provides indemnification and defense to OCERS' employees and Board of Retirement ("Board ") members for claims arising from their conduct performed within the course and scope of their duties to the retirement system. This provision of indemnity and defense is required under the Government Claims Act, specifically, Government Code Sections 825 and 995. The purpose of this policy is to set forth ~~the manner in~~ which how OCERS will carry out its obligations of indemnity and defense.

Introduction

A public entity like OCERS may be required to pay a judgment, settlement, or compromise in an action brought against an OCERS employee or Board member. This duty to indemnify arises where:

- 1) the action is based on an act or omission of the individual within the scope of their employment or official position;
- 2) the individual requests in writing at least 10 days before the day of the trial that OCERS defend the action; and
- 3) the individual cooperates in good faith in the defense of the action.¹

Similarly, OCERS is generally required, upon request, to provide for the defense of any civil action brought against an OCERS employee or Board member on account of an act or omission conducted in the scope of their employment or official position.² In particular, OCERS must provide for the defense of such actions where:

- 1) the action is based on an act or omission of the individual within the scope of their employment or official position;
- 2) the individual did not act with actual fraud, corruption, or actual malice; and
- 3) defense of the action would not create an actual conflict of interest between OCERS and the individual.³

OCERS is required to provide a defense if a potential, rather than an actual, conflict of interest exists. However, in that case, OCERS is not required to provide the individual with separate defense counsel in an action that names both the employee or Board member and OCERS. Also, OCERS is not required to defend an employee or Board member when an investigation is instituted (but no civil action is yet filed) alleging a conflict of interest violation under Government Code section 1090.

¹ Govt Code, §825 subd. (a).

² Gov. Code, § 995; for exceptions, see Gov. Code, §§ 995.2 to 995.4.

³ Govt Code, §§ 995, 995.2.



OCERS Board Policy

Indemnity and Defense Policy

The purpose of requiring public agencies to indemnify and defend their employees and officials is to encourage those individuals to zealously carry out their duties, secure in the belief that if they are sued for doing so, their agency will come to their aid.

These indemnity and defense obligations apply to both current and former employees and officials. For purposes of this policy, a "claim" is the filing of any civil or administrative action. In addition, "employees" include OCERS' direct employees and employees of the County of Orange who work at OCERS. However, OCERS reserves subrogation rights against the County in any case where OCERS provides an indemnity in place of the County's obligation.

Determination Process

It is vital that issues of indemnity and defense are addressed ~~in a prompt and efficient manner~~promptly and efficiently. With that objective, the Board adopts the following procedure for all claims made against Board members or employees arising from an act or omission occurring within the course and scope of performing their duties ~~with~~to OCERS:

1. As soon as practicable after a claim is filed or threatened to be filed, the Board member or employee will notify the OCERS' Legal Division in writing of their request for OCERS to defend the claim and provide it with all reasonably necessary or useful information about the claim.
2. The Legal Division will review the claim (or potential claim) and determine whether indemnification and defense are required or otherwise in OCERS' best interest. The Legal Division will then notify the individual of its determination, and agenda consideration of the issue by the Board in closed session held at the next regular Board meeting.⁴
3. The Board will have sole authority to determine whether OCERS will indemnify and defend the individual.⁵ If the Board decides against indemnification or defense, the individual will be notified in writing as soon as practicable. If the individual commences a legal action challenging the Board's determination, and until that challenge is resolved, OCERS will advance the reasonably necessary defense costs on behalf of the individual on terms satisfactory to OCERS.
4. Indemnification by OCERS shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general.⁶

⁴ OCERS is required to inform the employee within 20 days from the receipt of a written request for defense whether it will or will not provide a defense, and the reason for a refusal (Govt Code, §995.2(b)).

⁵ Board members and employees who have ceased their duties with OCERS prior to receiving a claim shall also be entitled to a determination of indemnity and defense.

⁶ Gov. Code, § 825(f)(4).



OCERS Board Policy

Indemnity and Defense Policy

Coordination

Defense of claims requires diligent coordination and it is necessary for all individuals who seek indemnification or defense to fully cooperate with OCERS throughout the claim.⁷ For its part, OCERS, through the Legal Division, will monitor the claim's status and communicate with the indemnified individual ~~on a regular basis~~regularly through the claim process to keep them informed of the ~~progress of the claim's~~progress.

If OCERS accepts the defense of the claim, OCERS will select competent legal counsel reasonably agreed to by the indemnified individual. In providing that defense, OCERS may use its own attorney, employ outside counsel, or purchase insurance ~~which requires that the insurer~~requiring the insurer to provide the defense. ~~In the event that~~ OCERS possesses insurance applicable to the claim, OCERS will tender the claim to the insurer and work with the insurer to ensure that any policy coverage is provided.

Prior to the determination of whether OCERS will indemnify and defend the individual, OCERS shall pay the reasonably necessary attorneys' fees and costs to defend the claim. In the event that OCERS denies defense and it is ultimately determined that OCERS correctly denied defense, OCERS will work with the individual to arrange the repayment of the amount advanced.

However, should OCERS grant defense coverage, it will cover the expenses incurred in providing a defense and will not recover them from the employee.⁸ If OCERS pays any portion of a claim or judgment, the employee or official is also not required to reimburse OCERS,⁹ except where the claim arises from the individual's actual fraud, corruption, or actual malice, or where the employee willfully failed or refused to defend the action in good faith, or to reasonably cooperate in good faith in the defense conducted.¹⁰

Policy Review

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

Policy History

The Board adopted this policy on April 16, 2007. The Board amended this policy on January 18, 2011, March 17, 2014, January 19, 2016, June 17, 2019, ~~and~~ June 20, 2022, and [date].

⁷ A public employee's failure to cooperate in good faith with the public entity's defense of a claim against the employee relieves the public entity of its obligation to indemnify the employee (*DeGrassi v. City of Glendora*, 207 F.3d 636 (9th Cir. 2000)).

⁸ Gov. Code, § 996.

⁹ Gov. Code, § 825.4.

¹⁰ Gov. Code, § 825.6.



OCERS Board Policy Indemnity and Defense Policy

Secretary's Certificate

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

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

~~06/20/2022~~

Steve Delaney
Secretary of the Board

Date



OCERS Board Policy Indemnity and Defense Policy

Authority and Purpose

OCERS typically provides indemnification and defense to OCERS' employees and Board of Retirement ("Board ") members for claims arising from their conduct performed within the course and scope of their duties to the retirement system. This provision of indemnity and defense is required under the Government Claims Act, specifically, Government Code Sections 825 and 995. The purpose of this policy is to set forth how OCERS will carry out its obligations of indemnity and defense.

Introduction

A public entity like OCERS may be required to pay a judgment, settlement, or compromise in an action brought against an OCERS employee or Board member. This duty to indemnify arises where:

- 1) the action is based on an act or omission of the individual within the scope of their employment or official position;
- 2) the individual requests in writing at least 10 days before the day of the trial that OCERS defend the action; and
- 3) the individual cooperates in good faith in the defense of the action.¹

Similarly, OCERS is generally required, upon request, to provide for the defense of any civil action brought against an OCERS employee or Board member on account of an act or omission conducted in the scope of their employment or official position.² In particular, OCERS must provide for the defense of such actions where:

- 1) the action is based on an act or omission of the individual within the scope of their employment or official position;
- 2) the individual did not act with actual fraud, corruption, or actual malice; and
- 3) defense of the action would not create an actual conflict of interest between OCERS and the individual.³

OCERS is required to provide a defense if a potential, rather than an actual, conflict of interest exists. However, in that case, OCERS is not required to provide the individual with separate defense counsel in an action that names both the employee or Board member and OCERS. Also, OCERS is not required to defend an employee or Board member when an investigation is instituted (but no civil action is yet filed) alleging a conflict of interest violation under Government Code section 1090.

¹ Govt Code, §825 subd. (a).

² Gov. Code, § 995; for exceptions, see Gov. Code, §§ 995.2 to 995.4.

³ Govt Code, §§ 995, 995.2.



OCERS Board Policy

Indemnity and Defense Policy

The purpose of requiring public agencies to indemnify and defend their employees and officials is to encourage those individuals to zealously carry out their duties, secure in the belief that if they are sued for doing so, their agency will come to their aid.

These indemnity and defense obligations apply to both current and former employees and officials. For purposes of this policy, a "claim" is the filing of any civil or administrative action. In addition, "employees" include OCERS' direct employees and employees of the County of Orange who work at OCERS. However, OCERS reserves subrogation rights against the County in any case where OCERS provides an indemnity in place of the County's obligation.

Determination Process

It is vital that issues of indemnity and defense are addressed promptly and efficiently. With that objective, the Board adopts the following procedure for all claims made against Board members or employees arising from an act or omission occurring within the course and scope of performing their duties with OCERS:

1. As soon as practicable after a claim is filed or threatened to be filed, the Board member or employee will notify the OCERS' Legal Division in writing of their request for OCERS to defend the claim and provide it with all reasonably necessary or useful information about the claim.
2. The Legal Division will review the claim (or potential claim) and determine whether indemnification and defense are required or otherwise in OCERS' best interest. The Legal Division will then notify the individual of its determination, and agenda consideration of the issue by the Board in closed session held at the next regular Board meeting.⁴
3. The Board will have sole authority to determine whether OCERS will indemnify and defend the individual.⁵ If the Board decides against indemnification or defense, the individual will be notified in writing as soon as practicable. If the individual commences a legal action challenging the Board's determination, and until that challenge is resolved, OCERS will advance the reasonably necessary defense costs on behalf of the individual on terms satisfactory to OCERS.
4. Indemnification by OCERS shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general.⁶

⁴ OCERS is required to inform the employee within 20 days from the receipt of a written request for defense whether it will or will not provide a defense, and the reason for a refusal (Govt Code, §995.2(b)).

⁵ Board members and employees who have ceased their duties with OCERS prior to receiving a claim shall also be entitled to a determination of indemnity and defense.

⁶ Gov. Code, § 825(f)(4).



OCERS Board Policy Indemnity and Defense Policy

Coordination

Defense of claims requires diligent coordination and it is necessary for all individuals who seek indemnification or defense to fully cooperate with OCERS throughout the claim.⁷ For its part, OCERS, through the Legal Division, will monitor the claim's status and communicate with the indemnified individual regularly through the claim process to keep them informed of the claim's progress.

If OCERS accepts the defense of the claim, OCERS will select competent legal counsel reasonably agreed to by the indemnified individual. In providing that defense, OCERS may use its own attorney, employ outside counsel, or purchase insurance requiring the insurer to provide the defense. If OCERS possesses insurance applicable to the claim, OCERS will tender the claim to the insurer and work with the insurer to ensure that any policy coverage is provided.

Prior to the determination of whether OCERS will indemnify and defend the individual, OCERS shall pay the reasonably necessary attorneys' fees and costs to defend the claim. In the event that OCERS denies defense and it is ultimately determined that OCERS correctly denied defense, OCERS will work with the individual to arrange the repayment of the amount advanced.

However, should OCERS grant defense coverage, it will cover the expenses incurred in providing a defense and will not recover them from the employee.⁸ If OCERS pays any portion of a claim or judgment, the employee or official is also not required to reimburse OCERS,⁹ except where the claim arises from the individual's actual fraud, corruption, or actual malice, or where the employee willfully failed or refused to defend the action in good faith, or to reasonably cooperate in good faith in the defense conducted.¹⁰

Policy Review

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

Policy History

The Board adopted this policy on April 16, 2007. The Board amended this policy on January 18, 2011, March 17, 2014, January 19, 2016, June 17, 2019, June 20, 2022, and [date].

⁷ A public employee's failure to cooperate in good faith with the public entity's defense of a claim against the employee relieves the public entity of its obligation to indemnify the employee (*DeGrassi v. City of Glendora*, 207 F.3d 636 (9th Cir. 2000)).

⁸ Gov. Code, § 996.

⁹ Gov. Code, § 825.4.

¹⁰ Gov. Code, § 825.6.



OCERS Board Policy Indemnity and Defense Policy

Secretary's Certificate

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

A handwritten signature in blue ink that reads "Steve Delaney". The signature is written over a horizontal line.

Steve Delaney
Secretary of the Board

Date



Memorandum

DATE: March 20, 2025
TO: Members of the Governance Committee
FROM: Manuel D. Serpa, General Counsel
SUBJECT: **GOVERNANCE COMMITTEE WORK PLAN AND MEETING SCHEDULE FOR 2025**

Work Plan of the Governance Committee for 2025

The Charters and Policies listed below are due for review by the Governance Committee and the Board in 2025.

Meeting Dates:

1. March 20, 2025
2. May 8, 2025
3. August 21, 2025
4. November 20, 2025

March 20, 2025 - Meeting Agenda Items:

1. Off-Cycle Review of the Membership Eligibility Requirements Policy
2. Adoption of the Digital Signature Policy
3. Triennial Review of the Overpaid and Underpaid Contributions Policy
4. Triennial Review of the Overpaid and Underpaid Plan Benefits Policy
5. Off-Cycle Review of the Pay Item Review Policy and Pay Item Request and Approval Procedures for Employers Policy
6. Triennial Review of the Indemnity and Defense Policy
7. Update on the Employer Data Project

May 8, 2025 - Meeting Agenda Items:

1. Triennial Review of the Protocol for Handling Workplace Complaints Against Board Members and Executives
2. Triennial Review of the Retirement Enhancement Review Policy
3. Triennial Review of the Whistleblower Policy
4. Triennial Review of the Monitoring and Reporting Policy
5. Triennial Review of Trustee Education Policy
6. Off-Cycle Review of the Travel Policy
7. Triennial Review of the Pensionable Compensation Policy
8. Triennial Review of the Compensation Earnable Policy
9. Off-Cycle Review of the Securities Litigation Policy

August 21, 2025 - Meeting Agenda Items:

1. Triennial Review of the Declining Employer Payroll Policy
2. Triennial Review of the Reserves and Interest-Crediting Policy
3. Triennial Review of the Withdrawing Employer Contributing Obligation Policy
4. Triennial Review of the Withdrawing Employer Fully Satisfied Obligation Policy
5. Triennial Review of the Assistant CEO, External Operations Charter

6. Triennial Review of the Board of Retirement Charter
7. Triennial Review of the Board of Retirement Chair Charter
8. Triennial Review of the Board Vice Chair Charter
9. Triennial Review of the Committee Chair Charter

November 20, 2025 - Meeting Agenda Items:

1. TBD

Governance Committee Reviews Performed in 2024

Charters:

1. General Counsel Charter
2. Assistant CEO, Finance and Internal Operations Charter

Policies:

1. Off-Cycle Review of the Actuarial Funding Policy
2. Off-Cycle Review of the Travel Policy
3. Triennial Review of the Write Off Policy
4. Triennial Review of the Cost Impacting Policy
5. Triennial Review of the Extraordinary Expense Recovery Policy
6. Triennial Review of the Securities Litigation Policy
7. Triennial Review of the Succession Policy
8. Off-Cycle Review of the Member Services Customer Service Policy
9. Triennial Review of the Legislative Policy
10. Triennial Review of the Disposition of Surplus Property Policy
11. Triennial Review of the Pay Item Review Policy
12. Triennial Review of the Records Management Policy

OAPs:

13. OAP re: Felony Forfeiture
14. OAP re: Required Minimum Distributions
15. OAP re: Division of Retirement Benefits Upon Divorce

Rolled Over to 2025:

1. Employer Data Policy
2. Membership Eligibility Requirements Policy
3. Pensionable Compensation Policy
4. Compensation Earnable Policy
5. Overpaid and Underpaid Contributions Policy
6. Overpaid and Underpaid Plan Benefits Policy

Submitted by:



MDS - Approved

Manuel D. Serpa
General Counsel



Memorandum

DATE: March 20, 2025
 TO: Members of the Governance Committee
 FROM: David Kim, Asst. CEO, External Operations; Manuel D. Serpa, General Counsel, OCERS
 SUBJECT: **UPDATE ON THE EMPLOYER DATA PROJECT**

Background

At the direction of the Board, OCERS staff has quarterly informational meetings with representatives from our Employer groups regarding the data reported to OCERS and the need for all components of Final Average Salary to be reported on the biweekly transmittal file in an accurate and timely fashion. Last year, the OCERS team met with the Employer groups at their headquarters buildings to review the process from their perspective and hosted two employer meetings to solicit feedback on the draft Employer Data Policy (Policy). In addition, the team is in the process of updating a detailed procedure document, the OCERS Employer Handbook, reflecting the required steps the Employer and OCERS must take to process transmittal files. A copy of that document was shared with the Employers.

OCERS Employer Handbook

The goal of the new Employer Handbook (Handbook) is to outline the steps required to ensure accurate reporting and review of member payroll information from Participating Employers on a bi-weekly basis. The Handbook clarifies the roles and responsibilities of OCERS and its Employers to facilitate the accurate exchange of the data elements required for OCERS to perform its function of administering the retirement system. The Handbook is designed to guide Employers in providing the specific information required for the transmittal and to address any exceptions that may arise during the process. The Handbook details the data transmittal field requirements including the detail record layouts and data formatting. Additionally, the Handbook details the exception reporting identified during the transmittal process, noting the error file type, priority and validation condition.

The latest draft of the Handbook was shared with Employers during the February quarterly meeting. The OCERS team will schedule individual meetings with each Employer to discuss their specific data requirements and gather feedback on the Handbook.

OCERS Employer Data Policy

The latest draft of the Policy is attached. This version has specific fee provisions removed and a reference to implementation and fee schedules that are yet to be determined. Based on feedback from Employers, the OCERS team is prioritizing the finalization of the Employer Handbook, which will then inform the drafting of the Policy. We are not seeking action on the Policy at this time.

Employers continue to express concerns about the fees referenced in the Policy. In prior discussions with the Governance Committee, the use of milestones to impose fees was explored. The County

proposed a progressive approach: first, implementing corrective actions for Employers with excessive errors. If the corrective actions fail to resolve the issues, fees would then be applied to the Employer.

Attachment

Submitted by:



DK-Approved

David Kim
Assistant CEO, External Operations



MDS-Approved

Manuel D. Serpa
General Counsel



OCERS Board Policy Employer Data Policy

Purpose and Objective

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

Policy Guidelines

2. *Definitions*¹

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

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

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

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

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

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

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

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

¹ Terms are defined here for ease of reference and are intended to remain consistent with their definition under OCERS Compensation Earnable and Pensionable Compensation Policies.



OCERS Board Policy Employer Data Policy

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

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

Fatal Transmittal Exception: An exception in the Transmittal due to missing, incorrect, or incomplete information required to be included by the Employer, per the Employer Handbook.

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

Pay Period: Monthly or biweekly payroll period.

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

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

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

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

Roles and Responsibilities

OCERS

3. OCERS uses information received from Participating Employers to, among other things, update its information on members in its pension administration system, compute benefit estimates, perform benefit calculations, establish official termination dates, process refunds of contributions, and update member account balances. OCERS must accurately account for all Employer Data it receives, transmit that data to its actuary, and timely communicate with Employers regarding plan liabilities.
4. OCERS must maintain records of all contributions deposited by all Participating Employers and members and all benefits paid to members.²

Participating Employers

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

² Gov. Code, § 31599



OCERS Board Policy Employer Data Policy

6. Participating Employers are required to timely certify and transmit complete and accurate Employer Data to OCERS on a pay period basis in accordance with the CERL, PEPR, the OCERS Compensation Earnable and Pensionable Compensation Policies, and this Employer Data Policy. The Employer Data must be transferred using the protocol and schedule specified in **the Employer Handbook**, which is located on the OCERS website.

7. Participating Employers are responsible for providing OCERS with its list of Pensionable Pay Items.

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

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

Employer Payroll Reporting and Data Transmission

11. Employer Data transmission is the process by which Employers submit information such as Employer and employee contributions, salary, and hours worked to OCERS for OCERS to process and post to members' accounts or the appropriate reserve fund. Employer Data and transaction details for amounts related to individual employees are submitted through OCERS' Employer Self-Service portal or secure file transfer protocol (FTP). Participating Employers must transmit Employer Data to OCERS via the methods described in the Employer Handbook.
 - a. The payroll record is the most common record type. It contains information about an employee's earnings, contributions, and other pertinent information. Required fields on the payroll record are detailed in the "Transmittal Layout" in **the Employer Handbook**.



OCERS Board Policy Employer Data Policy

12. All documentation for each payment is due on the payment date for that contribution. OCERS retains the right to determine the accuracy and completeness of all data submissions supporting contribution payments. OCERS will exercise its authority to audit the Employer's records to determine the accuracy of benefits, reportable compensation, enrollment, and reinstatement.³
13. Participating Employers must correct incorrect transmittal data submitted previously using an adjustment file by the next pay period following submission.

Administrative Fees and Costs

14. OCERS may charge Participating Employers administrative fees in the event of significant and continued preventable errors related to transmittals and contribution payments. In addition, OCERS is authorized to assess a Participating Employer for the costs of administering the retirement system unique to that Employer; for example, costs directly relating to each Employer's plan design characteristics and employment practices (e.g., work schedules) that impact the transmittal of payroll data to OCERS.⁴ Any application of fees will be considered only upon full implementation of the Employer Handbook and per the attached fee schedule **[to be determined]**.
15. **Timely and Incomplete Submissions:** OCERS may assess a reasonable amount to cover costs incurred because a Participating Employer failed to submit requisite Employer Data and contributions or failed to do so timely.⁵ OCERS may also assess an Employer a reasonable amount to cover the audit, adjustment, or correction cost if it determines the Employer knowingly failed to report compensation by pay period.⁶

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

16. **Employer Transmittal Files:** Transmittal files must be formatted correctly and contain correct and accurate employee information, as set forth in the Employer Handbook, and Employer Data as specified in this Policy. If a transmittal file contains errors that prohibit the import of the file into the OCERS pension administration system, the Employer must create a new file.
17. **Fatal Transmittal Exceptions:** If the number of Fatal Transmittal Exceptions for a single pay period equals an amount over 3% of total payroll transactions for three or more consecutive pay periods or three or more pay periods in a single quarter, OCERS will alert the Employer that they have exceeded the acceptable threshold for errors. Following this notification, OCERS will attempt to hold meetings or conduct training with the Employer's staff to determine the cause of the errors and resolve the process or system issues causing the volume of exceptions.

³ Gov. Code, § 31543

⁴ Gov. Code, § 31580.1

⁵ Id.

⁶ Gov. Code, §31542.5



OCERS Board Policy Employer Data Policy

18. **Payment Discrepancies:** Employer and employee contributions stated on electronic or hardcopy reports from the Employer, including transmittal files, spreadsheets, and other reporting formats should generally match actual payment amounts. Any discrepancy between these amounts requires communication from the Employer upon payment remittance and clearing of the error. This communication must explain the discrepancy and the necessary action to resolve it. OCERS staff will send a notice to the Employer via e-mail if an explanation of the discrepancy does not accompany the contribution payment.
19. **Interest on Late Contribution Payments and Administrative Charges:** Any payment or partial payments received after the pay date of each pay period are considered late payments. A Participating Employer will be assessed an interest penalty for late payments.⁷ OCERS will ordinarily apply interest to the underpaid amount at OCERS' semi-annual interest crediting rate⁸ but reserves the right to assess additional interest (e.g., OCERS' assumed rate of investment return) and add penalties to the underpaid amount in cases of intentional late payments or delays in remedying late payments. OCERS will invoice an Employer for any additional interest payment related to late contribution payments, supported by the interest calculation. An Employer should ensure that OCERS receives payment within thirty days of the invoice date. Interest will continue to accrue if the payment is not received within thirty days of the invoice date. An Employer may appeal in writing to the Board for abatement of interest.
20. **Implementation and Fee Schedules:** [to be determined]

Policy Review

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

Policy History

The Board adopted this policy on...

Secretary's Certificate

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

⁷ Gov. Code, § 31580.1

⁸ Gov. Code, § 31472.1