Alameda County Employees' Retirement Association
BOARD OF RETIREMENT

HYBRID (IN-PERSON and VIRTUAL) NOTICE and AGENDA

THIS MEETING WILL BE CONDUCTED IN PERSON AND VIA TELECONFERENCE [GOV'T CODE § 54953(e)]

ACERA MISSION:
To provide ACERA members and employers with flexible, cost-effective, participant-oriented benefits through prudent investment management and superior member services.

Thursday, December 16, 2021
2:00 p.m.

LOCATION AND TELECONFERENCE	BOARD OF RETIREMENT - MEMBERS	
ACERA C.G. "BUD" QUIST BOARD ROOM 475 14TH STREET, 10TH FLOOR OAKLAND, CALIFORNIA 94612-1900 MAIN LINE: 510.628.3000 FAX: 510.268.9574 https://zoom.us/join Meeting ID: 879 6337 8479 Password: 699406 Call-In Number: 1 (669) 900-6833 US For help joining a Zoom meeting, see: https://support.zoom.us/hc/en-us/articles/201362193	DALE AMARAL CHAIR	ELECTED SAFETY
	JAIME GODFREY FIRST VICE-CHAIR	APPOINTED
	LIZ KOPPENHAVER SECOND VICE-CHAIR	ELECTED RETIRED
	OPHELIA BASGAL	APPOINTED
	KEITH CARSON	APPOINTED
	TARRELL GAMBLE	APPOINTED
	HENRY LEVY	TREASURER
	DARRYL WALKER	ELECTED GENERAL[1]
	GEORGE WOOD	ELECTED GENERAL
	NANCY REILLY	ALTERNATE RETIRED[2]
	VACANT	ALTERNATE SAFETY

1 Alternate Safety Member Trustee Walker is filling the vacancy created by Trustee Rogers' retirement. See Gov't Code §§ 31524, 31520.1(b).

2 The Alternate Retired Member votes in the absence of the Elected Retired Member, or, if the Elected Retired Member is present, then votes if both Elected General members, or the Safety Member and an Elected General member, are absent.

Note regarding accommodations: The Board of Retirement will provide reasonable accommodations for persons with special needs of accessibility who plan to attend Board meetings. Please contact ACERA at (510) 628-3000 to arrange for accommodation.

Note regarding public comments: Public comments are limited to four (4) minutes per person in total.

The order of agendized items is subject to change without notice. Board and Committee agendas and minutes, and all documents distributed to the Board or a Committee in connection with a public meeting (unless exempt from disclosure), are available online at www.acera.org.

The Board of Retirement welcomes you to its meeting and your interest is appreciated. Due to the pandemic, in-person public participation at the meeting may be limited on a first-come-first-served basis to maintain social distancing. You may also observe the meeting and address the Board by Zoom as follows:

VIA ZOOM (TELECONFERENCE)

*ZOOM INSTRUCTIONS:

The public can view the Teleconference and comment via audio during the meeting.
To join this Teleconference, please click on the link below.
https://zoom.us/join
Meeting ID: 879 6337 8479
Password: 699406
Call-In Number:
1 (669) 900-6833 US
For help joining a Zoom meeting, see: https://support.zoom.us/hc/en-us/articles/201362193

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT

4. CONSENT CALENDAR:
The Board will adopt the entire Consent Calendar by a single motion, unless one or more Board members remove one or more items from the Consent Calendar for separate discussion(s) and possible separate motion(s).

A. REPORT OF SERVICE RETIREMENTS:
Appendix A

B. APPROVE APPLICATIONS FOR RETIREMENT, DEFERRED:
Appendix B
Appendix B-1

C. APPROVE APPLICATIONS FOR DEFERRED TRANSFER:
None

D. LIST OF DECEASED MEMBERS:
Appendix D

E. APPROVE REQUEST(S) FOR UP TO 130 BI-WEEKLY PAYMENTS TO RE-DEPOSIT CONTRIBUTIONS AND GAIN CREDIT:
Appendix E

F. APPROVE STAFF RECOMMENDATIONS (UNCONTESTED) FOR DISABILITY RETIREMENTS:
Appendix F

G. APPROVE HEARING OFFICER RECOMMENDATIONS FOR DISABILITY RETIREMENTS:
None

H. APPROVAL of BOARD and COMMITTEE MINUTES:
November 18, 2021 Operations Committee Meeting
November 18, 2021 Minutes of the Regular Board Meeting
December 1, 2021 Operations Committee Minutes
December 1, 2021 Retirees Committee Minutes
December 8, 2021 Investment Committee Minutes

I. MISCELLANEOUS MATTERS:

- *Proposed Findings Regarding State of Emergency Pursuant to Gov't Code §54953(e)(3):*
  ***Staff Recommendation**: The Board finds that it has reconsidered the circumstances of the state of emergency and (1) the state of emergency continues to directly impact the ability of the members to meet safely in person, and (2) state or local officials continue to impose or recommend measures to promote social distancing.*
- *Approve Staff Recommendation regarding the County of Alameda's New Pay Item/Code Explosive Ordinance Disposal Team-Bomb Technician & Special Duties – 42T.*

-------End of Consent Calendar-------
(MOTION)

REGULAR CALENDAR
REPORTS AND ACTION ITEMS

5. DISABILITIES, RECOMMENDATIONS AND MOTIONS:

None.

6. COMMITTEE REPORTS, RECOMMENDATIONS AND MOTIONS:

A. Operations: [See December 1, 2021 Operations Committee Agenda Packet for public materials related to the below listed items.]

1. Summary of December 1, 2021 Meeting.

2. Motion to approve the annual agreement for $127,200 effective January 1, 2022, for ACERA's Benefits Consultant, Segal.

B. Retirees: [<u>See</u> December 1, 2021 Retirees Committee Agenda Packet for public materials related to the below listed items.]

1. Summary of December 1, 2021 Meeting.

2. Motion to continue to provide the Medicare Part B Reimbursement Plan (MBRP) benefit to eligible retirees in 2022, and approve the reimbursement based on the lowest standard monthly Medicare Part B premium at the rate of $170.10. The MBRP benefit is a non-vested benefit funded by contributions from ACERA Employers to the 401(h) account. After contributions are made, in accordance with the County Employees Retirement Law, ACERA treats an equal amount of Supplemental Retiree Benefit Reserve assets as employer contributions for pensions.

3. Motion to adopt the revised and updated Appendix A to Resolution No. 07-29, which reflects the changes approved by the Board to the Monthly Medical Allowance amounts for Group and Individual Plans as well as the Retiree Health Benefit contribution amounts for Plan Year 2022.

C. Investment: [<u>See</u> December 8, 2021 Investment Committee Agenda Packet for public materials related to the below listed items.]

1. Summary of December 8, 2021 Meeting.

2. Motion to adopt an up to $30 million investment in Tiger Infrastructure Partners Fund III as part of ACERA's Real Asset Portfolio – Infrastructure, pending completion of Legal and Investment Due Diligence and Successful Contract Negotiations.

3. Motion to adopt an up to $75 million investment in Monroe Capital Private Credit Fund IV as part of ACERA's Private Credit Portfolio, pending completion of Legal and Investment Due Diligence and Successful Contract Negotiations.

7. NEW BUSINESS:

A. Discussion and possible motion regarding member claims for exemption from the Board's June 17, 2021 decisions regarding the inclusion of vacation sell back and cash out in "final compensation" and discussion and possible motion regarding other similarly situated members.

This item will be addressed in Open Session (materials are included in the public agenda packet), but the Board may go into Closed Session to received advice from counsel, per Gov't Code § 54956.9(d)(2) (Conference With Legal Counsel—Anticipated Litigation: Significant Exposure to Litigation).

B. Discussion and possible motion to approve issuance of a Request for Information or Medical Advisor and Disability Claims Management Services.

C. Board Election Results.

D. Chief Executive Officer's Report.

E. Discussion and Possible Motion regarding Chief Executive Officer Compensation.

8. CONFERENCE/ORAL REPORTS

9. ANNOUNCEMENTS

10. BOARD INPUT

11. ESTABLISHMENT OF NEXT MEETING:

Thursday, January 20, 2022 at 2:00 p.m.

12. CLOSED SESSION:

A. Conference with Designated Representative (Dale Amaral) for Compensation Negotiations with the Chief Executive Officer (Cal. Gov't Code § 54957.6).

13. REPORT ON ACTION TAKEN IN CLOSED SESSION

14. ADJOURNMENT

APPENDIX A
APPLICATION FOR SERVICE RETIREMENT

AVEN, Irma
Effective: 9/30/2021
Superior Court

AZIZIAN, Angel
Effective: 10/2/2021
Alameda Health System

BROWN, Andrea
Effective: 10/2/2021
Superior Court

BROWN, Stephanie
Effective: 10/2/2021
Assessor

CHEUNG, Belinda
Effective: 10/1/2021
Alameda Health System

CODD, Frank
Effective: 10/2/2021
Public Works Agency

CUNNINGHAM, Jason
Effective: 10/2/2021
Sheriff's Office

DOAN, Mary
Effective: 9/16/2021
First 5

DOHERTY, Cornelius
Effective: 10/2/2021
Health Care Services Agency

GREENAN, Kelly
Effective: 10/2/2021
Auditor-Controller

HATTAWAY, Veronica
Effective: 10/2/2011
District Attorney

HOLDEN-GURIN, Tamara
Effective: 9/25/2021
Information Technology

JOHNSON, Dexter
Effective: 7/14/2021
Social Services Agency

JONROWE, Stefanie
Effective: 10/26/2021
Superior Court

KITAGAWA, Elenita
Effective: 10/2/2021
Social Services Agency

LANG, Rita
Effective: 10/2/2021
Health Care Services Agency

MARKS, Jay
Effective: 9/30/2021
Sheriff's Office

MORGAN, Janetta
Effective: 10/2/2021
Health Care Services Agency

OKERBERG, Carma
Effective: 9/8/2021
Health Care Services Agency

OSUR, Micahel
Effective: 10/1/2021
Health Care Services Agency

OWENS, Kenneth
Effective: 10/20/2021
Probation Department

REGENT, Robert
Effective: 10/2/2021
Health Care Services Agency

SMITH, Anthony
Effective: 10/1/2021
Health Care Services Agency

WONG, Helen
Effective: 10/17/2021
General Services Agency

APPENDIX B
APPLICATION FOR DEFERRED RETIREMENT

COSTA, Samantha N.
Human Resource Services
Effective Date: 10/1/2021

GRUNDY, Yvonne L.
Community Development Agency
Effective: 10/25/2021

JARRATT, Richard C.
Alameda Health System
Effective: 10/2/2021

JOHNSON, Jessica D.
Social Services Agency
Effective: 9/15/2021

KENNETH, Lester A.
Alameda Health System
Effective: 10/29/2021

KNAPP, Saunyei A.
Probation Department
Effective: 10/29/2021

LECA, Andrew J.
Sheriff's Office
Effective: 11/12/2021

LEFF, Amy A.
Health Care Services Agency
Effective: 10/1/2021

LEYVA, Carlos
Sheriff's Office
Effective: 10/18/2021

LOPEZ, Ludmyrna
Human Resource Services
Effective: 10/29/2021

MEZA, Derek K.
Sheriff's Office
Effective: 10/22/2021

QUINN, Kelly
Alameda Health System
Effective: 10/18/2021

QUINTERO, Raul
Superior Court
Effective: 10/8/2021

RANDOLPH, Melanie L.
Alameda Health System
Effective: 9/3/2021

SANCHEZ, Claudia R.
Social Services Agency
Effective: 10/1/2021

SIMS, Seneschel L.
District Attorney
Effective: 11/12/2021

TRAN, Phong
Social Services Agency
Effective: 10/15/2021

TRAN-GARDE, Lilly L.
Superior Court
Effective: 11/4/2021

APPENDIX B-1
APPLICATION FOR NON-VESTED DEFERRED

BROWN, Tyla
Social Services Agency
Effective Date: 10/1/2021

CALLEJAS, Doris
First 5
Effective: 9/30/2021

CORCORRAN, Frances A.
Health Care Services Agency
Effective: 10/13/2021

ELGART, Sarah M.
Alameda Health System
Effective: 10/5/2021

APPENDIX B-1
APPLICATION FOR NON-VESTED DEFERRED

JONES, Christina K.
Social Services Agency
Effective: 10/26/2021

JONES, Saleemah S.
Community Development Agency
Effective: 11/12/2021

KELLEY, Aueska M.
General Services Agency
Effective: 10/21/2021

KUZARA, Phoenix
Alameda Health System
Effective: 9/25/2021

LINCHEY, Jennifer K.
Probation Department
Effective: 10/21/2021

LITTLETON, Tracey R.
Alameda Health System
Effective: 11/4/2021

LUONG, William L.
Health Care Services Agency
Effective: 10/22/2021

MARROQUIN, Eralda
Alameda Health System
Effective: 10/6/2021

MARTINEZ, Sandra
Superior Court
Effective: 11/1/2021

MASSEY, Oliver
Information Technology
Effective: 10/15/2021

MAYENO, Amy
Health Care Services Agency
Effective: 10/15/2021

MOORE, Marqueeta C.
Social Services Agency
Effective: 9/24/2021

NOORZAD, Maiwan S.
Sheriff's Office
Effective: 9/20/2021

OBERDORFER, Lilian
Health Care Services Agency
Effective: 10/11/2021

PANGANIBAN, Raymond J.
Information Technology
Effective: 10/8/2021

PETERSON, Everett D.
Social Services Agency
Effective: 10/22/2021

ROBERTS, Vernon R.
Human Resource Services
Effective: 10/11/2021

RUBIN, Jessica
Alameda Health System
Effective: 10/22/2021

RUIZ, Leticia
Alameda Health System
Effective: 10/27/2021

SIMPSON, Alyssia M.
Social Services Agency
Effective: 10/4/2021

SORIA, David L.
General Services Agency
Effective: 10/28/2021

SOTIROPULOS, Julia R.
Alameda Health System
Effective: 10/27/2021

SOUNGPANYA, Linda A. L
County Counsel
Effective: 10/8/2021

TABELIN, Kirstie
Superior Court
Effective: 10/29/2021

APPENDIX B-1
APPLICATION FOR NON-VESTED DEFERRED

TILLMAN, Jan C.
Superior Court
Effective: 11/5/2021

TIMM, Kelly
Superior Court
Effective: 10/29/2021

VANASSE, TRISTA M.
Alameda Health System
Effective: 10/3/2021

VOSGUERITCHIAN, Karin
Health Care Services Agency
Effective: 10/29/2021

WONG, Annie Y.
Assessor
Effective: 10/22/2021

WONG, Kristina B.
Health Care Services Agency
Effective: 11/3/2021

YOUNG, Ayana
Dept. of Child Support Svcs
Effective: 11/3/2021

YOUNG, Juary
Alameda Health System
Effective: 10/27/2021

APPENDIX D
LIST OF DECEASED MEMBERS

BAPTISTA, Anthony
Probation Department
11/21/2021

BOSTICK, Robin
Health Care Services Agency
10/22/2021

CHANDLER, Jo Anne
Superior Court
10/4/2021

CLARK, Mary G.
Superior Court
10/19/2021

COLLINS, Isabell
Sheriff's Office
10/29/2021

EIDEN, Robert
Sheriff's Office
10/6/2021

APPENDIX D
LIST OF DECEASED MEMBERS

FUCLES, Lessie
Social Services Agency
11/1/2021

HANSEN, Arija
Probation Department
9/12/2021

HESS, Carol
Sheriff's Office
10/26/2021

HUDSON, Jeffery
Sheriff's Office
11/14/2021

MOORE, Maryland
Probation Department
11/18/2021

RAYMUNDO, Myrla
Health Care Services Agency
11/13/2021

RICE, Helene
Non-Mbr Survivor of Harold B.Rice
10/30/2021

SALES, Frank B.
Non-Mbr Survivor of Perlita G.Sales
11/7/2021

SANCHAS, David
Sheriff's Office
10/28/2021

SEARS, Mary
Alameda Health System
11/14/2021

SHAHID, Sonia
Non-Mbr Survivor of Rafat A. Shahid
10/13/2021

SHELDON, Robert S.
Human Resource Services
11/10/2021

STANTON, Gail H.
Public Works Agency
10/5/2021

SWANN, Marietta
Non-Mbr Survivor of William H. Swann
10/2/2021

THOMPSON, James
Sheriff's Office
10/18/2021

TOBIAS, James
Publilc Works Agency
10/21/2021

TRAINI, Frederika
Library
10/12/2021

TROLLINGER, Socorra
Probation Department
10/20/2021

WHITE, Jerry
Sheriff's Office
11/23/2021

WONG, Don
Social Services Agency
11/13/2021

APPENDIX E
REQUEST FOR 130 BI-WEEKLY PAYMENTS TO RE-DEPOSIT CONTRIBUTIONS AND GAIN CREDIT

AGUILAR, Antonio
Government Code § 31641.5 Part Time & Days Prior

KAUR, Karmjeet
Government Code § 31641.5 Part Time & Days Prior

APPENDIX F
APPLICATION FOR DISABILITY RETIREMENT

Name: **Collins, April**
Type of Claim: Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Collin's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

Name: **Young, Vicki**
Type of Claim: Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Young's application for a service-connected disability, and waiving future annual medical examinations and questionnaires.

Based on the Medical Advisor's and Staff's review and determination of Ms. Young's ability to determine the permanency of his incapacity, to deny Ms. Young's request for an earlier effective date.

November 18, 2021
Minutes of the Regular Board Meeting
For approval under December 16, 2021
Board “Consent Calendar”

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT
MINUTES

THIS MEETING WAS CONDUCTED IN-PERSON and VIA TELECONFERENCE WITH VIDEO

Thursday, November 18, 2021

Chair Dale Amaral called the meeting to order at 2:00 p.m.

Trustees Present:	Dale Amaral Ophelia Basgal Keith Carson Tarrell Gamble (*Arrived After Roll Call*) Jaime Godfrey Liz Koppenhaver Henry Levy (*Arrived After Roll Call*) Darryl Walker George Wood Nancy Reilly (*Alternate*)
Staff Present:	Angela Bradford, Executive Secretary Sandra Dueñas-Cuevas, Benefits Manager Kathy Foster, Assistant Chief Executive Officer Jessica Huffman, Benefits Manager Harsh Jadhav, Chief of Internal Audit Vijay Jagar, Retirement Chief Technology Officer, ACERA David Nelsen, Chief Executive Officer Jeff Rieger, Chief Counsel Betty Tse, Chief Investment Officer
Staff Excused:	Victoria Arruda, Human Resource Officer

PUBLIC INPUT

None.

CONSENT CALENDAR
REPORTS AND ACTION ITEMS

APPROVAL of APPLICATIONS FOR SERVICE RETIREMENT
Appendix A

APPROVAL of APPLICATIONS FOR RETIREMENT, DEFERRED
Appendix B
Appendix B-1

APPROVAL of APPLICATIONS FOR DEFERRED TRANSFER
None

LIST OF DECEASED MEMBERS
Appendix D

APPROVAL of REQUEST FOR 130 BI-WEEKLY PAYMENTS TO RE-DEPOSIT CONTRIBUTIONS AND GAIN CREDIT
None

APPROVAL of STAFF RECOMMENDATIONS (UNCONTESTED) FOR DISABILITY RETIREMENTS
Appendix F

APPROVAL of HEARING OFFICER RECOMMENDATIONS FOR DISABILITY RETIREMENTS
None

APPROVAL of COMMITTEE and BOARD MINUTES
October 21, 2021 Actuarial Committee Minutes
October 21, 2021 Audit Committee Minutes
October 21, 2021 Revised Minutes of the Regular Board Meeting
November 3, 2021 Investment Committee Minutes

MISCELLANEOUS MATTERS
Proposed Findings Regarding State of Emergency Pursuant to Gov't Code § 54953(e)(3):
***Staff Recommendation**: Staff Recommendation: The Board find that it has reconsidered the circumstances of the state of emergency and (1) the state of emergency continues to directly impact the ability of the members to meet safely in person, and (2) state or local officials continue to impose or recommend measures to promote social distancing.*
Ratify "Extraordinary Contribution" definition, as added to Actuarial Funding Policy and Interest Crediting Policy.
Operating Expenses as of 9/30/21
Quarterly Cash Forecast as of 9/30/21
Quarterly Unaudited Financial Statements as of 9/30/21
September Board Conference Expense Report as of 9/30/2
Senior Manager Conference &Training Report as of 9/30/21
Quarterly Report on Member Under/Overpayments
3rd Quarter Call Center Report

21-85

It was moved by Jaime Godfrey and seconded by Liz Koppenhaver that the Board adopt the Consent Calendar, with revisions to the October 21, 2021 Board minutes. The motion carried 8 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, Walker, Wood*), 0 no, and 0 abstention. *Trustee Levy was not present for the vote on the motion.*

REGULAR CALENDAR

REPORTS AND ACTION ITEMS

DISABILITIES, RECOMMENDATIONS AND MOTIONS

None.

COMMITTEE REPORTS, RECOMMENDATIONS AND MOTIONS

This month's Committee reports were presented in the following order:

Investment:

Jaime Godfrey gave an oral report stating the Investment Committee met on November 3, 2021 and that Staff, Verus and the Committee discussed the Timeline, Minimum Qualifications, and Scoring Matrix for the new Emerging Markets Equity Manager search.

21-86

It was moved by Jaime Godfrey and seconded by Ophelia Basgal that the Board approve the Timeline, Minimum Qualifications, and Scoring Matrix for the Emerging Markets Equity Manager Search. The motion carried 9 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 0 abstentions.

Trustee Godfrey further reported that Staff and Callan discussed the proposed changes to ACERA's Real Estate Investment Policy as well as the reasoning for the proposed changes.

21-87

It was moved by Jaime Godfrey and seconded by Keith Carson that the Board adopt an Amended Real Estate Investment Guidelines, Policies, and Procedures. The motion carried 9 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 0 abstentions.

Trustee Godfrey also reported that Callan discussed a new Real Estate Investment Plan for ACERA's Real Estate Asset Class.

21-88

It was moved by Jaime Godfrey and seconded by Keith Carson that the Board adopt a new Investment Plan for ACERA's Real Estate Asset Class. The motion carried 9 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 0 abstentions.

At the Investment Committee meeting, Staff and Callan presented a draft letter from the Board Chair to ACERA's real estate fund managers regarding the CDC eviction moratorium. Per the Committee's direction, Staff amended the draft letter to include Trustees' comments, which was presented at the meeting for the Board's consideration.

21-89

It was moved by Ophelia Basgal and seconded by Liz Koppenhaver that the Board Chair sign the finalized letter and direct Staff to send the letter to ACERA's Real Estate Managers. The motion carried 9 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 0 abstentions.

Minutes of the meeting were approved as part of the Consent Calendar.

Operations:

Jaime Godfrey gave an oral report stating that the Operations Committee met earlier today and that Staff presented the proposed 2022 ACERA Operating Expense Budget. Chief Executive Officer Dave Nelsen reported that ACERA's proposed 2022 Operating Expense Budget is approximately $22 million, a 2.7% increase over ACERA's approved 2021 Operating Expense Budget.

21-90

It was moved by Jaime Godfrey and seconded by Ophelia Basgal that the Board adopt the proposed 2022 ACERA Operating Expense Budget. The motion carried 9 yes (*Amaral, Basgal, Carson, Gamble Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 0 abstentions.

Minutes of the meeting will be presented to the Board for adoption on the Consent Calendar at the December 16, 2021 Board meeting.

NEW BUSINESS:

Discussion And Possible Motion to Determine An Interest Rate for Monthly Installment Plan Payments of Lump Sum Death Benefits, per Gov't Code § 31784

Chief Counsel Jeff Rieger explained that, per Government Code § 31784, some ACERA beneficiaries may elect to receive lump sum death benefits, plus interest, in monthly installments. The Board needs to determine an interest rate for such monthly installment payment plans in order for beneficiaries to make that election. The Board did not take action on this matter and requested that Staff provide additional information regarding other systems' practices and the financial impacts of adopting different interest rates, which will be discussed at a future Operations Committee meeting.

<u>David Nelsen, Chief Executive Officer's Report</u>

Chief Executive Officer Dave Nelsen presented his November 18, 2021 written CEO Report which provided an update on**:** ***1)*** Senior Manager Recruitment for Assistant CEO of Operations; ***2)*** Committee and Board Action Items; ***3)*** Conference/Event Schedule: Mr. Nelsen attended the SACRS Fall Conference November 9-12; ***4)*** Other Items: *a)* COVID-19 Responses; *b)* Pension Administration System Project; *c)* Board Elections; *d)* Other Recruitments for: ***i)*** an Investment Operations Officer; and ***ii)*** two Retirement Benefit Specialists; and ***5)*** Key Performance Indicators.

Mr. Nelsen reported on the status of the recruitment for the Assistant Chief Executive Officer of Operations. Mr. Nelsen stated that he received some outstanding applications and is currently screening them. Mr. Nelsen will keep the Board apprised as to when the interview process begins.

Mr. Nelsen also reported that the Board of Supervisors did not adopt the County's proposed Vaccination Mandate Policy. Therefore, County employees are no longer required to be vaccinated by November 19, 2021. Mr. Nelsen will keep the Board apprised of the status.

<u>CONFERENCE/ORAL REPORTS</u>

Trustees reported on their attendance at the SACRS Fall Conference and stated they were very impressed with the sessions. Specifically, the session with Canadian Speaker Francis Donald who provided a global and domestic update.

<u>ANNOUNCEMENTS</u>

None.

<u>BOARD INPUT</u>

Trustees, Staff and the public expressed their deepest condolences regarding the passing of Alameda County Board of Supervisor Wilma Chan - they also talked about the relationships they shared with Supervisor Chan. Mr. Nelsen announced that Supervisor Chan also served on the Board of Retirement from 1996 to 1999 and stated Supervisor Chan was still very much invested in County employees' retirement and as a result, she spoke to him about what he should focus on in his role as ACERA's new Chief Executive Officer when he started in 2016. Since Supervisor Chan could handle difficult situations with such eloquence and grace, she was fondly referred to as the "Velvet Hammer." All agreed that Supervisor Chan was a true champion for the people and a dedicated public servant. Supervisor Chan will be truly missed.

CLOSED SESSION

The Board reconvened into Open Session and the following Trustees returned:
Amaral, Basgal, Godfrey, Koppenhaver, Levy, and Reilly

A. Conference With Legal Counsel--Existing Litigation (Gov't Code § 54956.9(d)(1)): *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association*, Contra Costa County Superior Court, Case No. MSN12-1870.

The Board took no reportable action on the *ACDSA* v. *ACERA* matter.

B. Government Code Section 54957(b)(1): Public Employee Evaluation (Chief Executive Officer).

Chair Amaral announced that the Trustees nominated him to serve as the Board's Labor Negotiator for compensation discussions with Chief Executive Officer Dave Nelsen. The Board also discussed Mr. Nelsen's performance.

ADJOURNMENT

The meeting was adjourned in honor and in memory of Alameda County Board of Supervisor Wilma Chan at approximately 3:24 p.m.

Respectfully Submitted,

12/16/21

David Nelsen
Chief Executive Officer

Date Adopted

APPENDIX A
APPLICATION FOR SERVICE RETIREMENT

AGUILERA, David
Effective: 9/11/2021
Health Care Services Agency

BURKS, Marva
Effective: 9/14/2021
General Services Agency

CHUBA, Chudi
Effective: 9/18/2021
Social Services Agency

DANIELS, Charlotte
Effective: 9/4/2021
Sheriff's Office

DE LONG, Gregg
Effective: 7/12/2021
Alameda Health System

FOFANA SIMIEN, Ava
Effective: 8/21/2021
Social Services Agency

HALL, Theresa
Effective: 9/11/2021
Alameda Health System

HENRICKS, Gregory
Effective: 9/8/2021
Health Care Services Agency

HERTING, Susanne
Effective: 8/5/2021
Alameda Health System

HUMPHRIES, William
Effective: 8/20/2021
Sheriff's Office

JAMMALAMADAKA, Kameswari
Effective: 8/10/2021
Health Care Services Agency

KIMBROUGH, Judith
Effective: 7/30/2021
Alameda Health System

LEE, Kristen
Effective: 8/2/2021
Housing Authority

LOUIE, Elyse
Effective: 8/21/2021
District Attoney

MARTINEZ, Julio
Effective: 8/7/2021
Alameda Health System

MC COMAS, Justin
Effective: 9/4/2021
Sheriff's Office

MCGOLDRICK, Mark
Effective: 9/18/2021
Public Defender

MORRIS, Michael
Effective: 9/19/2021
Probation Department

NOWELL, Keith
Effective: 9/18/2021
Health Care Services Agency

PARISH, Brenda
Effective: 8/16/2021
Health Care Services Agency

PILOT, Melanie
Effective: 9/4/2021
Social Services Agency

PRASAD, Uma
Effective: 8/7/2021
Alameda Health System

PRYOR, Carolyn
Effective: 9/1/2021
Social Services Agency

RASMUSSEN, Jan
Effective: 8/13/2021
Human Resource Services

APPENDIX A
APPLICATION FOR SERVICE RETIREMENT

ROGERS, Sharonne
Effective: 8/2/2021
Alameda Health System

ROSAS, Jose
Effective: 8/7/2021
Sheriff's Office

SMITH, George
Effective: 7/31/2021
Housing Authority

SMITH, William
Effective: 8/25/2021
Superior Court

STREETER, Arthur
Effective: 8/21/2021
Sheriff's Office

SUVA, Teresite
Effective: 9/4/2021
Auditor-Controller

THOMAS, Janice
Effective: 8/21/2021
Health Care Services Agency

TORRENCE, Susan
Effective: 8/13/2021
District Attoney

TURNER, Carol
Effective: 9/11/2021
Social Services Agency

VELARDE, Andre
Effective: 7/24/2021
Housing Authority

YAFFE, Deborah
Effective: 9/8/2021
Health Care Services Agency

APPENDIX B
APPLICATION FOR DEFERRED RETIREMENT

ALLEN, Margaret M.
ACERA
Effective Date: 10/1/2021

AMAYA, Brian C.
Public Defender
Effective: 7/16/2021

BERKHEIM, Sydnee A.
District Attorney
Effective: 7/26/2021

BULANAN, Vincent L.
Social Services Agency
Effective: 8/20/2021

BUSSE, Stephanie E.
Sheriff's Office
Effective: 9/11/2021

CALHOUN, Leslie R.
Social Services Agency
Effective: 9/3/2021

CHAO, Vernching J.
Social Services Agency
Effective: 7/23/2021

CUTILLO, Thomas J.
Alameda Health System
Effective: 8/15/2021

DOVEY, Quinallison J.
Social Services Agency
Effective: 8/20/2021

FRYE, Brittney S.
Human Resource Services
Effective: 9/24/2021

APPENDIX B
APPLICATION FOR DEFERRED RETIREMENT

SAMPSON, Dana
Alameda Health System
Effective: 8/18/2021

WANG, Xia
Information Technology Department
Effective: 9/10/2021

WHITE, Babara A.
Superior Court
Effective: 9/17/2021

KAUFMAN, Karen A.
Social Services Agency
Effective: 7/9/2021

LABAT, Aimee N.
Health Care Services Agency
Effective: 9/3/2021

LEE, Kwang Y.
District Attorney
Effective: 8/6/2021

LOCKE, Sincerie
Superior Court
Effective: 8/27/2021

LUTSKY, Marta
Health Care Services Agency
Effective: 8/6/2021

MASANJE, Caroline N.
Alameda Health System
Effective: 8/25/2021

MESQUITA, Ana C.
Health Care Services Agency
Effective: 9/24/2021

MINSUK, Michele
Superior Court
Effective: 8/13/2021

PERKINS, Damon I.
Social Services Agency
Effective: 9/17/2021

RANDOLPH, Melanie L.
Alameda Health System
Effective: 9/3/2021

RE, Steve M.
Information Technology
Effective: 9/17/2021

ROCKER, Tara M.
Social Services Agency
Effective: 9/10/2021

ROMERO, Mayra
Sheriff's Office
Effective: 8/6/2021

APPENDIX B-1
APPLICATION FOR NON-VESTED DEFERRED

ABRAHAMSON, Lauren E.
Alameda Health System
Effective Date: 9/19/2021

ALVAREZ, Ayanna A.
Auditor-Controller
Effective: 9/3/2021

ASHTON, Jonathan C.
Alameda Health System
Effective: 7/15/2021

JAMES, Bria C.
Alameda Health System
Effective: 9/15/2021

JENNINGS, Vanessa K.
Health Care Services Agency
Effective: 8/27/2021

LAM, Vuong Q.
Alameda Health System
Effective: 8/27/2021

APPENDIX B-1
APPLICATION FOR NON-VESTED DEFERRED

LAZARO, Szarlene P.
Alameda Health System
Effective: 7/26/2021

MAPPES, Donna L.
Sheriff's Office
Effective: 9/17/2021

MARTENS, Maria C.
Sheriff's Office
Effective: 8/6/2021

MELO, Ellen
Alameda Health System
Effective: 8/27/2021

MERAZ, Alejandro J.
Alameda Health System
Effective: 8/12/2021

MILLER, Laura A.
Sheriff's Office
Effective: 8/6/2021

MONTES, Jose L.
Sheriff's Office
Effective: 8/31/2021

MOSS, Joshua K.
Public Works Agency
Effective: 9/28/2021

NEWMAN, Blair R.
Social Services Agency
Effective: 7/30/2021

NGUYEN, Bill
Public Defender
Effective: 9/17/2021

OROZCO, Tiffany T.
Health Care Services Agency
Effective: 8/20/2021

PANCHAL, Avni
Social Services Agency
Effective: 7/9/2021

POFF, Laurel
Sheriff's Office
Effective: 8/19/2021

QUEIROLO, Michelle
Public Defender
Effective: 9/17/2021

RAMOS RODRIGUEZ, Silvia D.
Alameda Health System
Effective: 9/1/2021

ROHRER, Cynthia D.
Alameda Health System
Effective: 6/25/2021

ROMERO, Eugenia B.
Sheriff's Office
Effective: 9/29/2021

SACHWITZ, Drew S.
Alameda Health System
Effective: 6/27/2021

SAEPHAN May P.
Social Services Agency
Effective: 7/29/2021

SANCHEZ, Alma M.
Social Services Agency
Effective: 7/23/2021

SHIPMAN, Tiffany L.
Alameda Health System
Effective: 9/17/2021

SINGH, Misha M.
Social Services Agency
Effective: 8/6/2021

TRIMMER, Jack K.
General Services Agency
Effective: 9/30/2021

VAN DYKE, Elyse D.
Alameda Health System
Effective: 9/9/2021

APPENDIX B-1
APPLICATION FOR NON-VESTED DEFERRED

VELAZQUEZ, Kristin J.
Sheriff's Office
Effective: 9/18/2021

VILLEGAS, Michael A.
Social Services Agency
Effective: 9/17/2021

WONG, Tiffany R.
Auditor-Controller
Effective: 10/13/2021

ZUNIGA, PAOLA O.
Health Care Services Agency
Effective: 8/10/2021

APPENDIX D
LIST OF DECEASED MEMBERS

BROOKS, Darleen
Social Services Agency
10/11/2021

CALHOUN, Ella
Alameda Health System
5/15/2021

COMSTOCK, Charles
Non-Mbr Survivor of Jean Comstock
9/30/2021

GREENHOUSE, Gretel
Health Care Services Agency
9/30/2021

MORTON, Helen
Alameda Health System
10/5/2021

RYAN, Timothy
Sheriff's Office
9/26/2021

SELF, Marie
Superior Court
10/11/2021

SIOCO, Antonio
General Services Agency
10/13/2021

STILLWATER, Kokil
Social Services Agency
9/19/2021

TSUJI, Dorothy
Non-Mbr Survivor of Kenneth Tsuji
9/26/2021

APPENDIX F
APPLICATION FOR DISABILITY RETIREMENT

Name: **Bock, Thomas**
Type of Claim: Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Mr. Bock's application for a service-connected disability, and waiving future annual medical examinations and questionnaires.

APPENDIX F
APPLICATION FOR DISABILITY RETIREMENT

Name: **Coleman, Bridgette**
Type of Claim: Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Coleman's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

Name: **McGill, Phil**
Type of Claim: Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Mr. McGill's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

Name: **Neal, Nakia**
Type of Claim: Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Neal's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

Based on the Medical Advisor's and Staff's review and determination of Ms. Neal's ability to determine the permanency of her incapacity, to grant Ms. Neal's request for an earlier effective date.

November 18, 2021
Operations Committee Minutes
For approval under December 16, 2021
Board “Consent Calendar”

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
475-14th Street, Suite 1000, Oakland, CA 94612   800/838-1932   510/628-3000   fax: 510/268-9574   www.acera.org

MINUTES OF NOVEMBER 18, 2021 OPERATIONS COMMITTEE MEETING
THIS MEETING WAS CONDUCTED VIA TELECONFERENCE WITH VIDEO

To: Members of the Operations Committee

From: Jaime Godfrey, Chair, Appointed

Subject: Summary of the November 18, 2021 Operations Committee Meeting

Committee Chair Jaime Godfrey called the November 18, 2021 Committee meeting to order at 1:02 p.m.

ACERA TRUSTEES, SENIOR MANAGERS AND PRESENTING STAFF IN ATTENDANCE

Committee members present were Jaime Godfrey, Keith Carson, Henry Levy, and Liz Koppenhaver. Also present were Dale Amaral, George Wood, and alternate member Nancy Reilly. Darryl Walker, Tarrell Gamble, and Committee member Ophelia Basgal joined the meeting after roll call.

Staff present were David Nelsen, Chief Executive Officer; Kathy Foster, Assistant Chief Executive Officer; Jeff Rieger, Chief Counsel; Sandra Dueñas-Cuevas, Benefits Manager; Jessica Huffman, Benefits Manager; Betty Tse, Chief Investment Officer; Vijay Jagar, Chief Technology Officer; and Harsh Jadhav, Chief of Internal Audit.

PUBLIC INPUT

None

Action Items

1. Discussion and Possible motion to approve the proposed 2022 ACERA Operating Expense Budget

Staff presented a summary of the proposed 2022 ACERA Operating Expense Budget.

It was moved by Ophelia Basgal and seconded by Keith Carson that the Committee recommend to the Board of Retirement to approve the proposed 2022 ACERA Operating Expense Budget.

The motion carried 9 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker and Wood*), 0 no, and 0 abstentions.

INFORMATION ITEMS
None

TRUSTEE INPUT AND DIRECTION TO STAFF
None

FUTURE DISCUSSION ITEMS
December
- Discussion and possible motion to approve the annual agreement for the Segal Group

ESTABLISHMENT OF NEXT MEETING DATE
The next meeting is scheduled for December 1, 2021 at 9:30 a.m.

MEETING ADJOURNED
The meeting adjourned at 1:47 p.m.

December 1, 2021
Operations Committee Minutes
For approval under December 16, 2021
Board "Consent Calendar"

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
475-14th Street, Suite 1000, Oakland, CA 94612 800/838-1932 510/628-3000 fax: 510/268-9574 www.acera.org

MINUTES OF DECEMBER 1, 2021 OPERATIONS COMMITTEE MEETING
THIS MEETING WAS CONDUCTED VIA TELECONFERENCE WITH VIDEO

To: Members of the Operations Committee

From: Jaime Godfrey, Chair, Appointed

Subject: Summary of the December 1, 2021 Operations Committee Meeting

Committee Chair Jaime Godfrey called the December 1, 2021 Committee meeting to order at 9:31 a.m.

ACERA TRUSTEES, SENIOR MANAGERS AND PRESENTING STAFF IN ATTENDANCE

Committee members present were Jaime Godfrey, Liz Koppenhaver. Also present were Dale Amaral, George Wood, and alternate member Nancy Reilly. Tarrell Gamble and Committee members Ophelia Basgal, Keith Carson, and Henry Levy joined the meeting soon after roll call.

Staff present were David Nelsen, Chief Executive Officer; Kathy Foster, Assistant Chief Executive Officer; Jeff Rieger, Chief Counsel; Sandra Dueñas-Cuevas, Benefits Manager; Jessica Huffman, Benefits Manager; Betty Tse, Chief Investment Officer; Vijay Jagar, Chief Technology Officer; and Harsh Jadhav, Chief of Internal Audit.

PUBLIC INPUT
None

Action Items

1. Discussion and possible motion to recommend that the Board of Retirement approve the annual agreement for Segal, ACERA's Benefits consultant

Recommendation
Staff recommends that the Operations Committee recommend to the Board of Retirement to approve the annual agreement for $127,200 effective January 1, 2022 for ACERA's Benefits Consultant, Segal.

It was moved by Ophelia Basgal and seconded by Keith Carson that the Committee recommend to the Board of Retirement to approve the annual agreement for Segal, ACERA's Benefits consultants.

The motion carried 7 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, and Wood*), 0 no, and 1 abstention (*Levy*).

INFORMATION ITEMS

1. **Operating Expenses as of 10/31/2021**
   Staff provided the operating expenses as of October 31, 2021. As of October 31, 2020, actual expenses were $1,674K under budget. Budget overages noted were Professional Fees ($40K over budget) and Depreciation (1K over budget). Budget surpluses noted were Staffing ($1,055K under budget, Staff Development ($101K under budget), Office Expense ($118K under budget), Insurance ($34K under budget), Member Services ($38K under budget), Systems ($77K under budget), and Board of Retirement ($2927K under budget).

2. **Staff report on changes and enhancements to benefits processing, member services, and website**
   Staff updated the committee on changes and enhancements to benefits processing, member services, and the ACERA website.

3. **2022 Medical Advisor Services RFI**
   Staff presented the 2022 Medical Advisor Services RFI. This items was moved to the board agenda for December as an action item at the Committee Chair's direction.

TRUSTEE INPUT AND DIRECTION TO STAFF

None

FUTURE DISCUSSION ITEMS

February

- Discussion and Possible Motion to Approve the 2021 Discharge Request of Benefits Overpayments
- Proposed 2022 Operations Committee Work Plan
- Un-Audited Financial Statements as of 12/31/21
- Operating Expenses as of 12/31/21
- Actual Cash Report as of 12/31/21
- Board Member Conference Expense Report for 4th Qtr. 2021
- Senior Manager Conference and Training Expense Report for 4th Qtr. 2021

ESTABLISHMENT OF NEXT MEETING DATE

The next meeting is scheduled for Wednesday February 2, 2022 at 9:30 a.m.

MEETING ADJOURNED

The meeting adjourned at 10:32 a.m.

December 1, 2021
Retirees Committee Minutes
For approval under December 16, 2021
Board “Consent Calendar”

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
475-14th Street, Suite 1000, Oakland, CA 94612 800/838-1932 510/628-3000 fax: 510/268-9574 www.acera.org

MINUTES OF DECEMBER 1, 2021 RETIREES COMMITTEE MEETING

THIS MEETING WAS CONDUCTED VIA TELECONFERENCE WITH VIDEO

To: Members of the Retirees Committee

From: Liz Koppenhaver, Chair

Subject: Summary of the December 1, 2021 Retirees Committee Meeting

Committee Chair Liz Koppenhaver called the December 1, 2021 Committee meeting to order at 10:33 a.m.

ACERA TRUSTEES, SENIOR MANAGERS AND PRESENTING STAFF IN ATTENDANCE

Committee members present were Liz Koppenhaver, Henry Levy, Darryl Walker, and George Wood. Also present were Dale Amaral, Ophelia Basgal, Jamie Godfrey, and alternate member Nancy Reilly. Tarrell Gamble, and Committee member Keith Carson joined the meeting after roll call.

Staff present were Victoria Arruda, Human Resources Officer; Sandra Dueñas-Cuevas, Benefits Manager; Kathy Foster, Assistant Chief Executive Officer; Jessica Huffman, Benefits Manager; Harsh Jadhav, Chief of Internal Audit; Vijay Jagar, Chief Technology Officer; David Nelsen, Chief Executive Officer; Ismael Piña, Assistant Benefits Manager; Jeff Rieger, Chief Counsel and Betty Tse, Chief Investment Officer.

PUBLIC INPUT

None.

ACTION ITEMS

1. Adoption of Medicare Part B Reimbursement Plan Benefit for 2022

Staff and Segal, ACERA's Benefits Consultant, provided information on ACERA's Medicare Part B Reimbursement Plan (MBRP) benefit, including retirees' out-of-pocket costs, and the percentage of retirees affected at each of the designated income levels, based on the retirees' ACERA retirement allowances only. Staff recommends to continue the benefit for 2022 based on the reimbursement at the lowest standard premium rate of $170.10.

It was moved by Darryl Walker and seconded by Ophelia Basgal that the Committee recommend to the Board of Retirement to continue to provide the Medicare Part B Reimbursement Plan (MBRP) benefit to eligible retirees in 2022, and approve the reimbursement based on the lowest standard monthly Medicare Part B premium at the rate of $170.10. The MBRP benefit is a non-vested benefit funded by contributions from ACERA Employers to the 401(h) account. After contributions are made, in accordance with the County Employees Retirement Law, ACERA treats an equal amount of Supplemental Retiree Benefit Reserve assets as employer contributions for pensions.

The motion carried 9 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, 0 abstentions.

2. Adoption of Updates to Appendix A of 401(h) Account Resolutions

Staff stated that in order for Resolution No. 07-29 to remain current for the upcoming 2022 Plan Year, Appendix A was amended to reflect the Board of Retirement's (Board) decisions regarding the Monthly Medical Allowance amounts for Group and Individual plans; and medical, dental, and vision premium amounts as adopted by the Board.

It was moved by Jaime Godfrey and seconded by Keith Carson that the Committee recommend to the Board of Retirement (Board) to adopt the revised and updated Appendix A to Resolution No. 07-29, which reflects the changes approved by the Board to the Monthly Medical Allowance amounts for Group and Individual Plans as well as the Retiree Health Benefit contribution amounts for Plan Year 2022.

The motion carried 9 yes (*Amaral, Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, 0 abstentions.

<u>INFORMATION ITEMS</u>

1. Presentation on Hearing Aid Benefits

Segal, ACERA's Benefits Consultant, provided information on the hearing aid market analysis and cost, ACERA's current hearing aid benefits, and additional hearing aid providers. There was discussion regarding the Build Back Better Act, which contains a provision to expand Medicare to cover hearing benefits. Trustees directed Staff to gather more information for consideration in exploring possible options to enhance the hearing aid benefits for retirees, without making any commitments.

2. Annual Retired Member (Lump Sum) Death Benefit Report

Staff provided information on the number and amount of the Retired Member (lump sum) Death Benefit payments made to eligible beneficiaries of retirees for the twelve-month period December 1, 2020 through November 30, 2021, including the payments made by reciprocal agencies. This $1,000 benefit is funded by the Supplemental Retiree Benefit Reserve and is a vested benefit, as long as there are funds available.

Trustees directed Staff to find out what the average lump sum death benefit is among the other 1937 Act systems to compare with ACERA's current death benefit, and reconsider this $1,000 benefit.

3. Virtual Retiree Health and Wellness Fair Results and Open Enrollment Activity

Staff provided a report on the results of the Virtual Retiree Health and Wellness Fair, which was held through Zoom on October 28, 2021. The live presentations from the Alameda County Retired Employees (ACRE) and Retired Employees of Alameda County, Inc. (REAC) retiree associations, Kaiser Permanente, VSP, Delta Dental and Via Benefits were recorded and posted to ACERA's website, as well as links to the various vendors' webpages for additional information and resources. There were 244 online visitors during this virtual event. A report on open enrollment plan changes and processing status will be provided at the February 2022 Committee meeting.

Trustee Koppenhaver commented that it was good to have the ACRE and REAC's presidents present information regarding their associations, which helped to clarify the differences between the two groups; and thought the presentations were well done. Pete Albert, President of ACRE, expressed his appreciation to ACERA for giving him and the REAC representative an opportunity to make the presentations during this event.

4. Miscellaneous Updates

Staff provided an update on the retiree payroll deductions to pay premiums to the Operating Engineers Local 3 Union (OE3) Medical Plan. A follow-up meeting with OE3 is scheduled for December 7th to further discuss the pre-payment submissions, and on-going payment and invoicing process.

TRUSTEE REMARKS

None.

FUTURE DISCUSSION ITEMS

- Annual Supplemental Cost of Living Adjustment (COLA)

ESTABLISHMENT OF NEXT MEETING DATE

The next meeting is scheduled for February 2, 2022 at 10:30 a.m.

MEETING ADJOURNED

The meeting adjourned at 11:13 a.m.

December 8, 2021
Investment Committee Minutes
For approval under December 16, 2021
Board "Consent Calendar"

The December 8, 2021 Investment Committee Minutes will be distributed under separate cover

<u>CONSENT CALENDAR ITEM</u>

Proposed Findings Regarding State of Emergency Pursuant to Gov't Code § 54953(e)(3):

Staff Recommendation: The Board finds that it has reconsidered the circumstances of the state of emergency and (1) the state of emergency continues to directly impact the ability of the members to meet safely in person, and (2) state or local officials continue to impose or recommend measures to promote social distancing.

<u>CONSENT CALENDAR ITEM</u>

Approve Staff Recommendation regarding the County of Alameda's New Pay Item/Code Explosive Ordinance Disposal Team-Bomb Technician & Special Duties – 42T.

MEMORANDUM TO THE BOARD OF RETIREMENT

DATE: December 16, 2021

TO: Members of the Board of Retirement

FROM: Sandra Dueñas-Cuevas, Benefits Manager SDC

SUBJECT: **One New Pay Item/Code Approve as "Compensation Earnable" and Exclude as "Pensionable Compensation" – County of Alameda**

The County of Alameda (County) requested that new pay item/code Explosive Ordinance Disposal Team-Bomb Technician & Special Duties – 42T be reviewed to determine whether it qualifies as "compensation earnable" and "pensionable compensation. This new pay item/code establishes a footnote provision for additional compensation of 10% of the base pay to be paid to an employee when assigned the responsibilities described below.

On November 23, 2021, the Board of Supervisors of the County of Alameda approved adding Subsection 3-17.55 to the Alameda County Salary Ordinance. It states: "Effective October 3, 2021, not to exceed one (1) employee occupying a position in Job Code #8620, when assigned as a Bomb Technician in the Explosive Ordinance Disposal ("EOD") Team and the management and supervision of the Unmanned Aerial Vehicle call outs, EOD dive teams in the United States, canine unit located at the Oakland Airport, the EOD unit, and a fleet of over 100 vehicles within the Special Operation Group Management, shall receive an additional ten percent (10%) compensation of the base pay. Employees who are compensated under subsection 3.17-55 shall not be entitled to receive additional compensation under subsection 3-17.3, 3-17.16, 3-17.44, or 3-17.45. This footnote will expire when the current incumbent in the position is vacated and shall be deleted from the Salary Ordinance immediately thereafter."

Staff and Chief Counsel reviewed the required supporting documentation (attached) and made the determination that because this pay item/code is for one employee, it does not qualify as "pensionable compensation" under Government Code Section 7522.34 (for PEPRA members). However, this pay item/code does qualify as "compensation earnable" under Government Code Section 31461 (for Legacy members). The two relevant Government Code sections are attached for the Board of Retirement's (Board) reference.

Staff informed the County that its determination will be included on the Board's consent calendar for its December 16, 2021 meeting. If this item is not pulled from the consent calendar for discussion, then the Board will approve Staff's determination to exclude pay item/code Explosive Ordinance Disposal Team-Bomb Technician & Special Duties – 42T from "pensionable compensation" under Government Code Section 7522.34 (for PEPRA members) and include it as "compensation earnable" under Government Code Section 31461 (for Legacy members).

Attachments

REQUEST FOR ACERA'S REVIEW OF A NEW PAY ITEM/CODE

Employer Name:	County of Alameda
Date of Request	11/24/2021
Employer Department Submitting the Request	Auditor-Controller's Agency
Contact Person/Employer (include title/position)	Satjit Dale
Contact Person Telephone incl area code	(510) 272-6520
Contact Person Email address	satjit.dale@acgov.org
Pay Item Name (and code Number)	**42T EOD Team-BombTech &Spec Duties**
Pay Item Effective Date per authorization:	10/03/2021
State if additional documentation is attached	Yes – Board Letter

NOTE: The following information is required before ACERA can review and respond to the request. To meet ACERA's requirements, please provide substantive responses below or on a separate paper and return , with this form, all of the supporting documentation prior to issuing (paying) the pay item to any employee who is an ACERA member.

1. State the job classification of employees eligible for the pay item (i.e. Job Code 0499-Nurse Practitioners II may receive this pay item)

RESPONSE #1: 8620-Lieutenant

2. State employment status of employees eligible to receive the pay item (i.e. full time employees, part time employees)

RESPONSE #2: Full Time

3. State the number of members or employees who are eligible to receive the pay item (i.e. all members or employees in a job classification eligible to receive the pay item, or "not to exceed one employee")

RESPONSE #3: Not to exceed one employee

4. State whether pay item is for overtime or regular base pay

RESPONSE #4: Regular base pay

5. State whether pay item is calculated as a fixed amount or percentage of the base pay

RESPONSE #5: Percentage, paid an additional 10% of base pay.

6. State whether the pay item is paid one time (i.e. incentive pay, referral pay, bonus, award)

RESPONSE #6: No

7. State whether the pay item is an ad hoc payment (i.e, stipend, payment for attending a meeting during the working hours, payment for attending a meeting during non-working hours)

RESPONSE #7: No

8. State whether the pay item is a reimbursement (i.e., car allowance, housing allowance, uniform allowance, mileage payment, cell phone allowance)

RESPONSE #8: No

9. State regular working hours of the employees who will receive the pay item (i.e., 37.5 hour workweek employees, 40 hour workweek employees)

RESPONSE #9: 40 Hour Workweek

10. State whether pay item is for work performed outside of the regular workweek (i.e., payment for work or services performed outside of the employee's 37.5 hour workweek, or outside the employee's 40 hour workweek)

RESPONSE #10: No

11. State whether the pay item if for deferred compensation

RESPONSE #11: No

12. State whether the pay item is for retro payments

RESPONSE #12: No

13. State whether the pay item is for accrued unused leaves (i.e., sick leave, annual leave, floating holiday, vacation, comp time)

RESPONSE #13: No

14. State whether the payment is compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member or employee

RESPONSE #14: No

15. State whether the payment is severance or other payment in connection with or in anticipation of a separation from employment (and state if this payment is made while employee is working)

RESPONSE #15: No

16. State whether the pay item is paid in one lump sum or biweekly (or over some other time period-monthly, quarterly, annually)

RESPONSE #16: Biweekly

17. State the basis for eligibility for the pay item (i.e., certification of completion of training program conducted by an accredited university, or employee assigned as supervisor of badge distribution)

RESPONSE #17: Per Salary Ordinance Section 3-17.55

Article 3, Section 3-17, Subsection 3-17.55 of the County of Alameda Salary Ordinance is hereby added to read as follows:

3-17.55 Effective October 3, 2021, not to exceed one (1) employee occupying a position in Job Code #8620, when assigned as a Bomb Technician in the Explosive Ordinance Disposal ("EOD") Team and the management and supervision of the Unmanned Aerial Vehicle call outs, EOD dive teams in the United States, canine unit located at the Oakland Airport, the EOD unit, and a fleet of over 100 vehicles within the Special Operation Group Management, shall receive an additional ten percent (10%) compensation of the base pay. Employees who are compensated under subsection 3.17-55 shall not be entitled to receive additional compensation under subsection 3-17.3, 3-17.16, 3-17.44, or 3-17.45. This footnote will expire when the current incumbent in the position is vacated and shall be deleted from the Salary Ordinance immediately thereafter.

SECOND READING - CONTINUED FROM 11/16/2021

AGENDA NO._____November 16, 2021

Human Resource Services

Lakeside Plaza Building
1401 Lakeside Drive, Suite 200
Oakland, CA 94612-4305
TDD: (510) 272-3703

2nd reading 11/23/21

November 16, 2021

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

SUBJECT: ADOPT SALARY ORDINANCE AMENDMENTS TO: 1) UPDATE SUBSECTION 1-1.1 TO INCREASE THE SALARIES FOR UNREPRESENTED DISTRICT ATTORNEY INSPECTOR SERIES & ACMEA GG PUBLIC DEFENDER INSPECTOR SERIES; 2) ADD NEW SUBSECTION 3-17.55 FOR THE ALAMEDA COUNTY SHERIFF'S OFFICE ("ACSO"); AND 3) AMEND SUBSECTION 3-21.100

Dear Board Members:

RECOMMENDATION:

Adopt Salary Ordinance amendments to:

i. Update Article 1, Section 1-1 (Pay Rate Schedules), Subsection 1-1.1 to increase the salaries for eight (8) classifications in the Unpresented District Attorney Inspector Series, and five (5) classifications in the Alameda County Management Employees Association General Government ("ACMEA GG") Public Defender Inspector Series, by three and fifty-two tenths percent (3.52%) retroactive to October 3, 2021;

ii. Add Article 3, Section 17 (Alameda County Sheriff's Office), subsection 3-17.55 to establish a new footnote for one (1) employee in the classification of Lieutenant (Job Code ("JC") #8620SM) in the Alameda County Sheriff's Office ("ACSO") when assigned special and additional functions as outlined in the Salary Ordinance, to receive an additional compensation of ten percent (10%) of the base pay retroactive to October 3, 2021; and

New Pay code

iii. Amend Article 3, Section 21 (Miscellaneous), subsection 3-21.100 to provide authority for the following: 1) for employees subject to the vacation hard cap, any vacation leave hours above the employee's maximum vacation accrual cap as of December 31, 2021, up to the additional 80-hours, shall be paid in cash; and 2) for employees subject to vacation soft cap, up to the additional 80-hours, shall be handled in accordance with the respective provisions of the Memoranda of Understanding ("MOUs") or County Administrative Code in the pay period containing January 1 of year 2023.

DISCUSSION/SUMMARY:

On September 28, 2021, your Board approved increasing the salaries for the four (4) classifications represented by the Deputy Sheriffs' Association ("DSA") by three and fifty-two tenths percent (3.52%). Historically, when the DSA-represented classifications receive a salary increase, this triggers the same salary increase for the eight (8) classifications in the Unrepresented District Attorney Inspector classification series (Inspector I [JC #8533CA]; Inspector II [JC #8535CA]; Inspector III [JC #8536CA]; Lieutenant of Inspectors [JC #8540SM]; Chief of Inspectors [JC #8545SM]; Captain of Inspectors [JC #8543SM]; Assistant Chief of Inspectors [JC #8544SM]; and Director, Victim Witness Program [JC #8575SM]) in the Office of the District Attorney. Moreover, when the Unrepresented District Attorney Inspector classification series receives a salary increase, that too triggers the same salary increase for the five (5) classifications in the Public Defender Investigator classification series (Public Defender Investigator I [JC #8576CA]; Public Defender Investigator II [JC #8577CA]; Public Defender Investigator III [JC #8579CA]; Senior Investigator, Public Defender's Office [JC #8581SM]; and Chief Investigator, Public Defender's Office [JC #8585SM]) as stipulated in the ACMEA GG MOU subsection 15.F. Therefore, staff recommends for said eight (8) and five

(5) classifications in the Unrepresented District Attorney Inspector classification series and ACMEA GG Public Defender Investigator classification series, respectively, to receive the same three and fifty-two tenths percent (3.52%) salary increase retroactive to October 3, 2021.

In addition, staff recommends that your Board approve adding subsection 3-17-55 to Article 3, Section 17 (Alameda County Sheriff's Office) of the Salary Ordinance to establish a footnote to compensate one (1) employee in the classification of Lieutenant (JC #8620SM) an additional ten percent (10%) of the base pay when assigned overall responsibility as a Bomb Technician in the Explosive Ordinance Disposal ("EOD") Team and management and supervision of the Unmanned Aerial Vehicle call outs, EOD dive teams in the United States, canine unit located at the Oakland Airport, the EOD unit, and a fleet of over 100 vehicles within the Special Operation Group Management, retroactive to October 3, 2021. Staff extended an offer to the Alameda County Management Employees Association - Sheriff's Sworn Unit 026, 027 and 026 ("ACMEA Sheriff's Sworn") to meet and confer on the impacts of the decision to add this new footnote and ACMEA Sheriff's Sworn did not respond to the County's offer. This footnote shall expire when the current incumbent in said classification vacates the position and shall be deleted from the Salary Ordinance immediately thereafter.

Lastly, on June 30, 2020, your Board approved creating a new subsection 3-21.100 to Article 3, Section 21 (Miscellaneous) of the Salary Ordinance to allow for an additional 80-hours vacation accrual above the maximum vacation accrual hard cap, stipulated in each respective MOUs, for all eligible employees, retroactive from June 15, 2020 through December 31, 2021. Subsequently on December 15, 2020, your Board approved amending said subsection to provide clarification that the provision is inclusive of both the soft- and hard-cap vacation accrual, stipulated in each respective MOUs. Given that said provision expires on December 31, 2021, staff recommends that your Board approve amending said provision to clarify that reference to maximum vacation cap accrual is also in the County Administrative Code and to provide authority for the following: 1) for employees subject to the vacation hard cap, any vacation leave hours above the employee's maximum vacation accrual cap as of December 31, 2021, up to the additional 80-hours, shall be paid in cash; and 2) for employees subject to vacation soft cap, up to the additional 80-hours as allowed by this provision shall be handled in accordance to the respective provisions of the MOUs or County Administrative Code in the pay period containing January 1 of year 2023. Also, said subsection shall sunset upon the last day of the pay period containing January 1, 2023 and shall be deleted from the Salary Ordinance upon the sunset date.

FINANCING:

Funds are available in the 2021-2022 Approved Budget and will be included in future years' requested budgets to cover the costs resulting from these actions.

VISION 2026 GOAL:

The Salary Ordinance amendments meet the 10x goal pathways of **Employment for All** in support of our shared vision of a **Prosperous and Vibrant Economy**.

Very truly yours,

DocuSigned by:
Joe Angelo
2CC022F934DA404...
Joe Angelo, Director
Human Resource Services

c: CAO
Auditor-Controller
County Counsel
Agency/Department Heads

1st reading 11/16/21
2nd read 11/23/21

Approved as to Form
DONNA ZIEGLER, County Counsel

By [signature]
Kristy van Herick, Asst. County Counsel

AN ORDINANCE AMENDING
CERTAIN PROVISIONS OF THE 2020 – 2021
COUNTY OF ALAMEDA SALARY ORDINANCE

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Article 1, Section 1-1, Subsection 1-1.1 of the County of Alameda Salary Ordinance is hereby amended as follows effective on October 3, 2021:

Job Code		Title	Unit Code	Step 01	Step 02	Step 03	Step 04	Step 05	FLSA Status
8533	CA	Inspector I	046	4328.80				5432.00	N
8535	CA	Inspector II	046	4702.40				5868.00	N
8536	SM	Inspector III	046	5308.00	5576.80	5844.00	6137.60	6450.40	N
8540	SM	Lieutenant of Inspectors	046	5868.80	6164.00	6463.20	6787.20	7120.80	X
8543	SM	Captain of Inspectors	046	6743.20	7080.00	7428.00	7806.40	8188.00	X
8544	SM	Assist Chief of Inspectors	046	7080.00	7428.00	7806.40	8188.00	8596.80	X
8545	SM	Chief of Inspectors	046	7760.80	8140.80	8543.20	8980.00	9416.00	X
8575	SM	Dir, Victim Witness Program	046	5868.80	6164.00	6463.20	6787.20	7120.80	X
8576	CA	Public Defender Investigator I	R48	3112.80	3268.80	3432.00	3604.00	3882.40	N
8577	CA	Public Defender Investigator II	R48	3832.00	4023.20	4225.60	4436.00	4716.00	N
8579	CA	Public Defender Investigator III	R48	4885.60	5120.80	5325.60	5593.60	5868.00	N
8581	SM	Senior Investigator, Pub Def Off	R48	5868.80	6164.00	6463.20	6787.20	7120.80	X
8585	SM	Chief Investigator, Pub Def Off	R48	6743.20	7080.00	7428.00	7806.40	8188.00	X

SECTION II

Article 3, Section 3-17, Subsection 3-17.55 of the County of Alameda Salary Ordinance is hereby added to read as follows:

New add'l Pay 42T

3-17.55 Effective October 3, 2021, not to exceed one (1) employee occupying a position in Job Code #8620, when assigned as a Bomb Technician in the Explosive Ordinance Disposal ("EOD") Team and the management and supervision of the Unmanned Aerial Vehicle call outs, EOD dive teams in the United States, canine unit located at the Oakland Airport, the EOD unit, and a fleet of over 100 vehicles within the Special Operation Group Management, shall receive an additional ten percent (10%) compensation of the base pay. Employees who are compensated under subsection 3.17-55 shall not be entitled to receive additional compensation under subsection 3-17.3, 3-17.16, 3-17.44 or 3-17.45. This footnote will expire when the current incumbent in the position is vacated and shall be deleted from the Salary Ordinance immediately thereafter.

Gov. Code Sec. 31461. (a) "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

(b) "Compensation earnable" does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned in each 12-month period during the final average salary period regardless of when reported or paid.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned in each 12-month period during the final average salary period, regardless of when reported or paid.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned in each 12-month period during the final average salary period, regardless of when reported or paid.

Gov. Code Sec. 7522.34. (a) "Pensionable compensation" of a new member of any public retirement system means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

(b) Compensation that has been deferred shall be deemed pensionable compensation when earned rather than when paid.

(c) "Pensionable compensation" does not include the following:

(1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.

(2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.

(3) Any one-time or ad hoc payments made to a member.

(4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.

(5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.

(6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.

(8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.

(9) Employer contributions to deferred compensation or defined contribution plans.

(10) Any bonus paid in addition to the compensation described in subdivision (a).

(11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).

(12) Any other form of compensation a public retirement board determines should not be pensionable compensation.

NEW BUSINESS

7.A. Discussion and possible motion regarding member claims for exemption from the Board's June 17, 2021 decisions regarding the inclusion of vacation sell back and cash out in "final compensation" and discussion and possible motion regarding other similarly situated members.

This item will be addressed in Open Session (materials are included in the public agenda packet), but the Board may go into Closed Session to received advice from counsel, per Gov't Code § 54956.9(d)(2) (Conference With Legal Counsel—Anticipated Litigation: Significant Exposure to Litigation).

ACERA

Office of the Chief Counsel

To: ACERA Board of Retirement

From: Jeff Rieger, Chief Counsel

Meeting: December 16, 2021

Subject: Member Claims Re June 17, 2021 Board Decisions

INTRODUCTION

On June 17, 2021, after substantial public discussion at the June 2, 2021 Operations Committee meeting and the June 17, 2021 Board meeting, the Board made changes to the amount of vacation sell back and cash out ACERA will include in the "final compensation" upon which members' retirement allowances are based. The Board applied the changes prospectively only, to members with an effective retirement date on or after June 18, 2021.

As ACERA implemented the changes, five members asserted claims that the Board's decisions should not apply to them because, when making their retirement plans, they relied on expected retirement allowances that were calculated under the prior rules. Those five claims are attached as Exhibits 1-5. ACERA staff also notified all members who had their retirement applications on file with ACERA as of June 17, 2021 and were impacted by the Board's June 17, 2021 decisions that the Board will be considering the five claims at its December 16, 2021 meeting. There were 15 such members and two of those members submitted claims to ACERA, which are attached as Exhibits 6 and 7.

As explained below, based on information developed since the Board took action on June 17, 2021, it is within the Board's discretion to determine whether to adjust the application of its June 17, 2021 decisions with respect to some or all of the 20 members at issue. A reasonable exercise of discretion might include: (1) leaving the Board's June 17, 2021 decisions unaltered and denying all claims; (2) deciding each claim on its individual merits; (3) modifying the effective date of the Board's decisions to include those retirements for which applications were made by June 17, 2021; or (4) making other appropriate adjustments to the Board's June 17, 2021 decisions.

The 20 members have been invited to attend the December 16, 2021 meeting and present to the Board, subject to the Chair's control of the meeting. If the Board believes it needs more information before it makes a decision, it may seek further information from staff, the claimants or any other relevant resource to be brought back for consideration at a future Board meeting.

GENERAL BACKGROUND

The background of the issues that were before the Board on June 17, 2021 are complex and arise from a quarter-century of history that includes ACERA litigation, changing published case law, a court-approved settlement agreement and legislative changes to ACERA's governing law that was effective on January 1, 2013. A memorandum outlining that complex quarter-century of history is attached as Exhibit 8.[1] As that memorandum explains, in *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 209 Cal.5th 1032 ("ACDSA Litigation"), the California Supreme Court made two apparently contradictory statements. One statement supported ACERA's practices that were in place at that time[2]; the other suggested that ACERA needed to change those practices.[3]

The Board made its decisions after much discussion and consideration of both the law and the facts presented. In that process, the California Attorney General claimed that a change was legally required for all ACERA members who retired on or after January 1, 2013, and threatened to seek judicial relief to that effect in the remand proceedings of the ACDSA Litigation. Further, ACERA's litigation counsel publicly expressed his understanding (which turned out to be correct) that the California Attorney General would not challenge the calculation of pre-June 18, 2021 retirees' allowances if the Board changed its practices for members who retired on or after June 18, 2021.

Throughout the Board's process, ACERA's participating employers never took a position on the issues. Members and union representatives urged the Board not to eliminate "straddling," which was the most significant issue before the Board. After the Board made changes for members with effective retirement dates on or after June 18, 2021, the California Attorney General formally abandoned any effort to challenge ACERA's practices as applied to members with effective retirement dates before June 18, 2021.

NATURE OF CLAIMS BEFORE THE BOARD

The thrust of all seven claims before the Board is that the claimants planned their retirements (how long to continue working, how much retirement income to expect, etc.), based on ACERA's practices in place before the Board's June 17, 2021 decisions. Further, they assert that ACERA staff should have done more to notify them of the possibility that the Board might change its practices. They claim that, if they had been notified of that possibility, they would have retired earlier to take advantage of the old practices.

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1 A copy of the memorandum that includes its exhibits can be found in the public packet for the Board's June 17, 2021 meeting, at https://www.acera.org/sites/main/files/file-attachments/061721_board_packet_public.pdf?1623379589.

2 "A better reading requires 'earned and payable' to refer to the amount of leave time that can be accrued during the final compensation period." *Id.* at 1096, fn.31.

3 "By limiting the inclusion of cashed out leave time to that 'earned and payable' in a '12-month period,' subdivision (b)(2) and (4) prevent this [straddling] practice." *Id.* at 1062-63.

Fundamentally, all of the claims are based on a legal doctrine called "equitable estoppel." Claimant Micheal O'Connor makes an equitable estoppel argument explicitly, but all of the claims fairly fall under that doctrine. Further, the individual claimants raise additional points about their particular circumstances, including for example:

- Vella Black-Roberts, Mark McGoldrick and Ronald Rettig-Zucchi all state that they delayed their retirements out of a sense of obligation due to the COVID, without knowing that their delay might result in a lower retirement allowances.

- Ronald Rettig-Zucchi explains that, if he had retired on or before April 1, 2021, as he had initially planned before the COVID crisis, he would have received a 2% COLA, which would have exceeded the amounts he seeks based on the old rules for inclusion of vacation sell back and cash out.

- Mark McGoldrick explains that, after delaying his originally planned retirement from in 2020, he would have retired in March 2021, but he further delayed retirement because another supervisor in his office was retiring and he felt obligated to avoid having two supervisors leave at the same time. He also describes medical conditions that prevented him from continuing to work after learning about application of the new rules, so he was unable to achieve the higher allowance he previously expected.

- Eric von Geldern and Micheal O'Connor detail how carefully they planned their retirement dates and the difficulty they would have had changing those dates.

- Timothy Murphy describes an injury he suffered that caused him to delay his retirement date (initially planned for March 31, 2021), because of concerns he had about medical coverage. Also, due to the injury, he could not delay retirement longer than he did in order to achieve the higher allowance he previously expected.

All but one of the claimants had their retirement applications on file with ACERA as of June 17, 2021. Mark McGoldrick, one of the original five claimants, filed his application with ACERA on July 5, 2021.

Scope of Claims

Seven Individual Claims: The estimated impact (based on "Unmodified" allowances) of ACERA's new practices on the members who submitted claims to ACERA are as follows:

- Eric von Geldern: $345 per month (about 2% of allowance)
- Micheal O'Connor: $342 per month (about 1.9% of allowance)
- Timothy Murphy: $298 per month (about 2% of allowance)
- Mark McGoldrick: $70 per month (about 0.8% of allowance)
- Ronald Rettig-Zucchi: $55 per month (about 1.3% of allowance)
- Vella Black-Roberts: $89 per month (about 2% of allowance)
- Darryl Cheung: $287 per month (about 2.4% of allowance)

Total For All 20 Members: The total amount at issue for all members who submitted claims or had applications on file as of June 17, 2021 is about $2,367 per month—an average of about $118 per month per member (based on "Unmodified" retirement allowances).

Dollar Range For All 20 Members: The impact ranges from about $2 to about $345 per month. Most of the total impact is due to four of the members who made claims to ACERA ($345, $342, $298, $287) and two Tier 1 members with one-year final compensation that increases the impact of "straddling" ($282, $162). The impact on the other 14 members is less than $100 per month each (seven are under $50 per month each).

Percentage of Allowances: 17 of the 20 members are impacted by less than 2% of their retirement allowance. One is impacted by about 2.4% (higher than average vacation sell rights) and two are impacted by about 3.7% each (Tier 1 members).

ANALYSIS

The Board's Defense Of The Claims In Court Would Be Strong

The claims are best characterized as claims for equitable estoppel. Under that doctrine, a claimant may be entitled to prior expectations when the claimant relies to his or her detriment on another's conduct or representations. Here, the claimants allege that they relied on ACERA's prior practices, and alleged failure to inform them about a possible change to those practices, when planning their retirements. In the Alameda Litigation, the California Supreme Court explained:

> The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (1) the party to be estopped [ACERA] must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel [members] has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. Although equitable estoppel is a well-accepted remedy among private parties, it has been applied sparingly when the party sought to be estopped is a governmental entity. The government may be bound by an equitable estoppel in the same manner as a private party, but the doctrine is invoked only in those exceptional cases where justice and right require — that is, when the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel. In short, **equitable estoppel will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy**. *Alameda County Deputy Sheriff's Association, 9 Cal.5th at* 1072 (internal marks and citations omitted) (emphasis added).

Further, "principles of estoppel are not invoked to contravene statutes and constitutional provisions that define an agency's powers." *Fleice v. Chualar Union Elementary School Dist.* (1988) 206 Cal.App.3d 886, 893). Numerous cases have declined to apply equitable estoppel against a retirement system to expand member's rights beyond those provided by law. *See, e.g., Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1608; *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870; *Molina v. Board of Administration*, etc. (2011) 200 Cal.App.4th 53, 64; *City of Pleasanton v. Board of Administration* (2012) 211 Cal.App.4th 522, 543; *Chaidez v. Board of Administration* (2014) 223 Cal.App.4th 1425, 1431-32; *McGlynn v. State of California* (2018) 21 Cal.App.5th 548, 561-62.

Here, a reduction in benefits of less than 4% (less than 2% for most) likely would not qualify as the kind of "grave injustice" that would qualify for the application of equitable estoppel against ACERA. In the above-cited cases where the courts rejected equitable estoppel claims the additional amounts the members expected were greater than the additional amounts the members expected here.[4] Further, this Board's June 17, 2021 decisions were based on the Board's review of a California Supreme Court opinion that upheld the Legislature's efforts to eliminate perceived pension manipulation and abuse. The Board made this decision at a time when the California Attorney General was publically asserting that the Board was legally <u>required</u> to change its practices, which the Attorney General claimed permitted abusive pension spiking. Under those circumstances, it is hard to see how a court would find that application of the Board's decisions to the claimants was a "grave injustice," especially in light of the precedent rejecting estoppel against public retirement systems in cases with more significant amounts at issue.[5]

In sum, if the Board decides to deny all of the claims and leave its June 17, 2021 decision unaltered, it will have a strong defense to any claims that might be pursued in court.

<u>The Board Has Authority To Adjust Its Own June 17, 2021 Decisions</u>

The California Constitution entrusts the exclusive fiduciary responsibility for administering ACERA to the Board. *See* Cal. Const., art. XVI, § 17. Under Gov't Code § 31520.1, this Board is comprised of the county Treasurer, four independent trustees appointed by the county board of supervisors, three active members of the system elected by the system's active members, one retired member of the system elected by the system's retired members and two alternates (active safety member and retired member). The California Supreme Court described a California public retirement board's decision-making process:

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4 *Barrett*, *Medina* and *McGlynn* related to the tiers in which the members belonged. *City of Pleasanton* and *Molina* analyzed "compensation earnable" claims that were substantially more significant than 4% of the members' allowances. *Chaidez* related to most of the value of eight years of service credit.

5 There are serious questions about whether the factual elements of estoppel could be established for any of the claimants, given that (a) retirement estimates are never guaranteed, and (b) ACERA staff did not know what decisions, if any, the Board would make on June 17, 2021 (or what would happen in the ACDSA Litigation thereafter). The main point, though, is that, even if all of the factual elements for equitable estoppel were met, as a matter of law it is unlikely equitable estoppel would be available to the claimants.

"[T]hrough the representation of all stakeholders, fair and wise decisions will [ ] emerge." *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1096.

For decades, Gov't Code § 31461 has outlined the parameters of "compensation earnable" and stated that a members' "compensation earnable" ultimately shall be "determined by the board." In so doing, the Board must "discharge [its] duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims." Cal. Const., art. XVI, § 17(c). As one court explained: "Section 17 imposes various fiduciary duties on the board. Given the breadth of those duties, section 17 necessarily vests the board with discretion in the manner in which it fulfills those duties." *Nasrawi v. Buck Consultants* (2014) 231 Cal.App.4th 328, 342.[6]

On June 17, 2021, the Board was presented with uniquely challenging questions, in the context of a complex legal and factual history, including two apparently contradictory statements from the California Supreme Court in the ACDSA Litigation. Indeed, on the primary question that was before the Board regarding "straddling," the ACERA Legal Office made no recommendation and advised the Board to exercise its best judgment based on all of the facts and circumstances. None of ACERA's employers took a position on the issues before the Board on June 17, 2021. The California Attorney General argued that the Board needed to change its practices, but formally abandoned any claim that the Board was required to apply those changes to members with effective retirement dates before June 18, 2021.

Further, while the litigation risk of denying the present claims is low, litigation risk can never be completely eliminated[7] and the Board has broad discretion with respect to potential litigation. See *Fireman's Fund Insurance Company v. Workers' Compensation Appeals Board* (2010) 181 Cal.App.4th 752, 770-71 (broad authority by public entities to settle uncertain questions of law); *Nasrawi,* 231 Cal.App.4th at 340-43 (retirement board immune for claims it should have pursued litigation). The total amount at issue here is less

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6 This is not to say that the Board's discretion is unfettered. The Board must follow its governing law. In the present case, however, there was substantial uncertainty about what the Board's governing law required. The ambiguity in the law is crucial to the analysis in this memorandum. Without that ambiguity, the Legal Office would have made substantially different recommendations both at the June 17, 2021 meeting and with respect to the present claims.

7 Claimant Micheal O'Connor cites to the recent case *Nowicki v. Contra Costa County Employees' Retirement Association* (2021) 67 Cal.App.5th 736. From a legal perspective, that case is off point, because it turned on the proper construction of governing law, rather than the rules of equitable estoppel. From a practical perspective, however, the case illustrates the risks that are inherent in litigation. That appellate court overruled a trial court decision in the retirement system's favor and reinstated large amounts for Nowicki, even as the appellate court "recognize[d] that Nowicki's preretirement efforts to increase his compensation earnable in the period before his retirement, which allowed him to maximize his pension, epitomize pension spiking." *Id.* at 769.

than a single typical service-connected disability application and the impact is distributed among 20 members, so the cost of litigation could easily surpass the value of the claims.[8]

Based on the current claims, the Board has learned new facts about how the application of the Board's June 17, 2021 decisions impacted ACERA's members to whom the Board owes fiduciary duties. *See O'Neal v. Stanislaus County Employees' Retirement Association* (2017) 8 Cal.App.5th 1184, 1204. Thus, based on its broad authority over the administration of ACERA, if the Board determines it would have applied its June 17, 2021 decisions differently had it known everything it knows now, then the Board may adjust the application of its decisions to account for the new facts it has learned.

RECOMMENDATION

The Board should exercise its best judgment as to whether it should reverse the application of its June 17, 2021 decisions to some or all of the 20 members who have either made claims or who had their retirement applications on file as of June 17, 2021. This might include:

- Denying all claims and leaving the June 17, 2021 decisions unaltered.
- Granting some or all of the seven claims before the Board.
- Granting some or all of the seven claims before the Board and granting the same relief to the other 13 members who had their applications on file with ACERA as of June 17, 2021.
- Altering the applicability of the Board's June 17, 2021 decisions in some other way that the Board finds appropriate and consistent with its fiduciary duties.

[8] This is not to say that the Board should always consider granting claims that may lead to litigation costs that are greater than the claims are worth. As previously explained, the legal ambiguity surrounding the issues that were before the Board on June 17, 2021 looms large in this memorandum.

Exhibit 1
Eric von Geldern

Dear Honorable Board of Trustees of ACERA:

I am writing to request that you restore my retirement income to the amount represented by ACERA in my retirement paperwork. I left my job and took other irreversible actions in reliance on those ACERA representations, having properly completed and submitted my final ACERA paperwork and received my ACERA Acceptance Letter, dated May 25, 2021.

In May 2021 I started my formal consultation with ACERA to establish the specifics of my retirement, importantly including the retirement amount I would receive monthly. The monthly amount was determined and it was consistent with what I expected. Accordingly, in reliance on the monthly income represented by ACERA to start retirement, on May 19th, 2021 I electronically submitted all my signed retirement paperwork. On May 20th I signed again everything at ACERA in ink, as required.

I received my ACERA Acceptance Letter on May 26th. It confirmed that July 9th, 2021 would be my separation of service date, and instructed me to complete the retirement process. It stated that I must notify my employer without delay, and also provide my employer a copy of the ACERA Acceptance Letter.

I did as I was instructed; I immediately notified my employer, the Alameda County District Attorney's Office. My unused paid leave was determined, and a transition plan was discussed, starting with who I recommended to take over the team. My recommendation was immediately approved and she was delighted to get the promotion. We all worked together to ensure that the transition was successful. I then started using my final paid leave time, including COVAL.

By the time of the June 18th reduction in retirement I was already past the point of no return, having already taken irreversible steps, been replaced in the office, and had started taking my final paid leave.

Moreover, I first learned of the June 18th retirement reduction 11 days later on June 29th when I received a voice message from ACERA informing me that my retirement income would be lower than represented in my final ACERA paperwork. By this time I was already living out of town using my paid leave to transition into retirement.

In leaving my job of almost 36 years I relied on ACERA's representations prior to, and during, ACERA's retirement process. I was in full compliance with the retirement process ACERA guided me through. I have relied on ACERA's representations and guidance to my detriment.

I request that you correct this unfairness for me and for any other similarly situated retirees.

Respectfully,

Eric von Geldern

Eric von Geldern

Exhibit 2
Micheal O'Connor

From: O'Connor, Micheal, DA <Micheal.O'Connor@acgov.org>
Sent: Tuesday, July 06, 2021 9:26 AM
To: dnelson@acera.org; info@acera.org
Cc: Wood, George, DA <george.wood@acgov.org>; Carson, Keith, Supv BOS Dist 5 <kcarson@acgov.org>
Subject: Retroactive change in compensation terms.

Dear Mr. Nelson,

I am writing to ask that ACERA reconsider its decision on June 17 to retroactively change the amount of vacation sellback that goes into the final calculation for those members whose application to retire was accepted before that date.

Before setting a retirement date, I used the benefit estimator program to arrive at my probable post-benefit compensation amount. The figure I arrived at was based on ACERA's assurances, and even training, that vacation sellback compensation of twelve weeks would be included in that final figure. I spent the last three years carefully structuring my time in the Office, and foregoing vacation time.

I applied for retirement and received my ACERA acceptance letter on June 4, 2021. At that time, ACERA's estimate of benefits was consistent with the trainings I received from ACERA and with the calculations I had done on the ACERA benefit estimator. I announced my retirement to my Office and sent in my resignation letter. My Office has set a retirement party for me, just ten days from now. The venue has been paid for a venue and a caterer has been retained. More than a hundred fifty people are planning to attend.

After 5PM On July 1, nearly a month after my acceptance, and just after the close of the fiscal year, I got a voicemail from ACERA announcing that I would not receive the pension previously indicated. I was essentially told I would have to work longer or earn less.

The difference between what I had been told to expect and the actual amount is a little less than two percent. That may not seem a huge number, but it is two percent less than I had planned for. This is more pressing for me because I have no deferred compensation savings. Instead I put my salary into the college education of my three children, now grown. I did this because I believed that my pension would ultimately carry me through.

Two percent doesn't mean bankruptcy but it does mean a change of plans: with two children about to marry and a daughter applying for medical school, two percent makes a difference.
Of course I could work another six months. Six months in a high pressure, 60 hour a week job. As a problem solver in an already highly stressful job at the D.A.'s Office, I've seen my stress levels grow and my hours increase from 50 per week to 60 per week. But one of the things that has kept me going for this final burst was knowing that I was about to retire. To change plans now would mean xix months of continuing stress. Six months of my life I can never recover.

I can understand that reducing vacation compensation in the long haul may be fiscally responsible. I can understand that prior notice for those who haven't applied to retire might lead to a flood of applications. But I can't understand changing the rules in the middle of the game. This change does not consider those in my situation who have already submitted our applications and had them accepted. Since our applications were already approved or pending at the time of the board's decision, there would be no people rushing to retire if ACERA honored the previous compensation system.

The bottom line is that the board's decision is unfair. Fairness is fundamental to our system of government. In the criminal context, Due Process requires notice. I got none. In the criminal context, the Ex Post Facto clause prohibits retroactive changes in law. My only crimes are trying to retire and relying on the advice and promises made by ACERA for many years.

I ask that ACERA reconsider its decision to retroactively decrease my pension. I ask that for me and for others whose applications were pending or approved as of June 17, that ACERA honor the preexisting vacation sale compensation amount.

Micheal O'Connor
[redacted]
Micheal.O'Connor@acgov.org

Micheal O'Connor
[redacted]

October 19, 2021

Jeff Rieger
ACERA
jrieger@acera.org

Re: Board decision of June 16: request for pension recalculation

Dear Mr. Rieger

I am writing to confirm my request, by my earlier email, that the board exempt me and others in my situation regarding the June 17 decision to change its method of pension calculation with respect to vacation sale/cash out. I believe my request is supported by an analogous decision in ***Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.*** and ***Nowicki v. Contra Costa County Employees' Retirement Association***. (***ACDSA v. ACERA*** (2020) 9 Cal.5th 1032; ***Nowicki*** (2021) 67 Cal.App.5th 736, review filed (Sept. 20, 2021).) I ask that ACERA recalculate my pension using the figures originally promised; that all future payments be adjusted to reflect the recalculated amount; and that I be compensated for past underpayments commencing with my retirement on August 21.

As set forth in my earlier email, ACERA, through its training, online announcements, and in retirement counseling, had represented that a maximum of twelve weeks of vacation sale/cash out would be used to calculate my pension. In reliance, I submitted my request for retirement on June 2, 2021. On June 4, 2021, ACERA approved my request for a retirement date of August 20. On June 17, ACERA, with no prior notice, reduced the amount of my pension by changing the rules regarding vacation compensation. My only notice was a voicemail the evening of July 1 inviting me to reconsider retiring. By that time I had already begun the retirement process.

ACERA's actions come within the doctrine of equitable estoppel. There are four prerequisites to equitable estoppel: the estopped party must be appraised of the facts; the reliant party must reasonably believe that the estopped party will act in conformance with its representations; the reliant party must be ignorant of the true facts; and there must be detrimental reliance. Here, ACERA was surely familiar with ***ACDSA v. ACERA*** and the reaction to that opinion by other governmental agencies, yet ACERA made no effort to appraise me that it was contemplating a change in light of that opinion. On the contrary, ACERA continued its years-long practice of instructing its active members that final compensation would be calculated using a formula that involves the sale/cash out of vacation during the final three years of employment. Given my seniority and contract with the county, I was told that figure would amount to a total of twelve weeks. I had every reason to believe that ACERA would keep its word, and I calculated my retirement date accordingly. I submitted my application for retirement and my letter of resignation believing that ACERA would use the compensation method promised. ACERA affirmed its representations by approving my retirement. Only after those representations did ACERA change the rules of the game. I was not even informed of the change until after I had submitted my resignations letter, planned a retirement party, rearranged my finances, trained my replacement, and rearranged my personal life.

Equitable estoppel is not inevitably binding on a governmental, or quasi-governmental agency such as ACERA except in unusual instances to avoid injustice. In ***ACDSA v. ACERA***, the California Supreme Court rejected the ACDSA's claim that there had been an affirmative representation that the method of pension calculation would not be changed in response to legislative amendment. There is greater evidence of misrepresentation here. Notwithstanding the issuance of ***ACDSA v. ACERA*** in July of 2020, ACERA continued to instruct its membership that it would use the full vacation sale period in its final compensation determination.

The remedy I seek is not inconsistent with ***ACDSA v. ACERA***. Since ***ACDSA***, ACERA can adjust its vacation compensation computation with proper notice to affected parties. The Supreme Court found a valid governmental purpose in doing so. Under ***ACDSA***, however, ACERA's actions constitute a reduction in compensation without an offsetting benefit. The Court found that to extend offsetting benefits to the entire class of governmental employees affected by the opinion would undermine the reform. My situation differs because I am a member of a much narrower class: those active members whose retirement applications were approved before the Board changed its compensation method on June 17. To modify our pensions would not be minor and would in no way undermine the reform.

Though not entirely on point, my situation has some similarity with the plaintiff in ***Nowicki***. In ***Nowicki***, Contra Costa sought to change the pension of an actual retiree who had "improperly" relied on vacation sale in obtaining his county pension. The Court of Appeal acknowledged that the method used was disapproved in ***ACDSA v. ACERA***. Nevertheless the Court found that Contra Costa abused its discretion by penalizing the retiree for conduct that was expressly permitted at the time of his retirement. Unlike the decision in Contra Costa, the board's decision here came down after ***ACDSA v. ACERA***, and the decision here affected me after approving my retirement, but before my retirement actually began. Nevertheless, ***Nowicki*** stands for the proposition that a retirement board should not change the rules of the game retroactively.

Though I have spent much of my letter discussing legal concepts, I am really just asking ACERA to play fair. First, difference in amount is minimal in light of ACERA's overall operations, but significant to me as a retiree during a time of increasing inflation. I recognize that ACERA has the right to change the compensation formula after the giving of fair notice. That's not what happened to me. It's as though ACERA has encouraged me to jump off the high diving board, then moved the pool while I was in midair.

My request boils down to this: I am asking to do what I have come down to believe is a hallmark of Alameda County: I ask ACERA to keep its word.

Sincerely

Micheal O'Connor

Micheal O'Connor

Exhibit 3
Timothy Murphy

October 31, 2021

Dale E. Amaral
Chair, ACERA Board of Retirement
475 14th St.
Suite 1000
Oakland, CA 94612

Dear Mr. Amaral

I write to ask the Board of Retirement to consider my appeal of the Board's June 17, 2021, decision to limit vacation sellback to 360 hours of compensation earnable as it pertains to my pension allowance.

I was employed by the Public Defender's Office for over 32 years both as a law clerk and an attorney. I handled thousands of misdemeanor and felony cases, including homicides, sexual assault cases, and was frequently involved with very complex litigation during my long career.

On February 26, 2021, I informed our Assistant Chief Public Defender that I would be retiring at the end of March, but offered to return as a annuitant or volunteer thereafter because of the needs of our office. Two days later, February 28, 2021, I suffered a serious accident involving a head injury. At the time, I was so injured I was unable to ascertain the gravity of my situation. I was treated at the hospital and was diagnosed initially with a concussion and three fractures of the orbital socket.

Despite my injuries, I contacted ACERA and my retirement specialist , Ms. Vuong, prepared an Election of Retirement Allowance for me, effective March 31, 2021. (See attached file). The Election of Retirement Allowance did not include mention of the specific amount of vacation cash out which would be included as compensation earnable, but it was well known that ACERA members were able to include up to 480 hours of vacation sellback as part of our final average salary and that was my expectation as I had the necessary hours.

However, after working with Ms. Vuong, my plan to retire became derailed as the severity of my injury became apparent. The diagnosis changed from concussion to concussion with traumatic brain injury. The symptoms of my brain injury include chronic balance issues and I have fallen several times receiving additional, but temporary, injuries. I have memory lapses and neurological tests have revealed the executive functions of my brain to be adversely affected. I have trouble understanding things and have even required assistance in the preparation of this letter. I do not feel like myself anymore.

As my symptoms worsened in March, I grew concerned about my transition from my employer sponsored health plan to Medicare. I did not feel capable of making decisions around healthcare or even trusting that I would understand the nuances in the information I would receive. Therefore, I felt it was best to withdraw my retirement application, maintain my existing insurance, and use my available sick leave to do so.

I then contacted ACERA in June to renew my application for retirement. I received an estimate of my pension from Ms. Vuong dated June 22, 2021. I was surprised and confused when I read that my vacation sellback/cash out was limited to 360 hours. I contacted ACERA and learned that the Board took a very serious action without any real or effective notice to those of us who were imminently retiring. (See attachments)

As my original plan was to retire in March and there was absolutely no notice that the rule about vacation sellback was about to change, I feel it would be an injustice to me as a long-time member of the ACERA system to be denied what was available to me had I retired in March. If there had been any inkling at all that the rules around vacation sell back were to change, I would have retired prior to June 17, 2021.

It should be clear from the description of my medical condition that I did not have the option to work for a longer period of time to make up the difference between my current pension and what I would have received had I retired on or before June 17th. Ms. Vuong calculated the difference to be $267.19 (see attachment) in my retirement allowance. While that may not seem like a lot per month, I undoubtedly face future medical bills and, in addition, I have a child just starting college, so I anticipate many other expenses.

I am not privy to all the information which led the Board to change the rules followed for so many years and applicable to so many members of ACERA such as myself, but the action of June 17, 2021, seems like a precipitous one given the lack of notice. As a member of the system who has made all the necessary contributions with the anticipation that I would receive the benefit promised, I am distressed by the action taken on June 17, 2021.

I respectfully request that the Board consider my appeal and grant to me the pension I would receive under the rules applicable prior to June 17, 2021.

Thank you for your consideration.

Sincerely,

Tim A. Murphy

Election of Retirement Allowance

Retiree Name

Timothy A. Murphy

In accordance with the provisions of the County Employees' Retirement Law of 1937 providing for the election of a retirement allowance:

I hereby elect that effective **March 31, 2021***, my allowance be paid under the option indicated below by my signature.

I understand that my estimated retirement allowance and any survivor's allowance and beneficiary benefit are based on my age at retirement, on **31.14362** years of service, and on **$18,423.83** monthly final average salary. The current accumulated contributions and earnings in my account totals **$759,609.01**. The estimated allowance amounts stated under the following options are estimates based on the information ACERA currently has available. Once you receive your final employment paycheck and all compensation, contributions, service credit and termination date is verified, your finalized allowance amount will be provided to you in a confirmation letter before your first retirement allowance is paid to you.

*Changes to the date of retirement will impact monthly retirement allowance.

Declaration of Reason for Absence of Spouse or Domestic Partner Signature

I declare under the penalty of perjury under the laws of the State of California that:

☐ I am not married, or registered with the Secretary of State under a domestic partnership.

Member Signature | Date

Beneficiary Designation Status

Based on the information you provided regarding your marital status, you are not designating a beneficiary to receive a continuance of your retirement allowance benefit.

Please review the options below and select the one best suited to your needs.

Alternative Unmodified Option ☐

I hereby elect to receive a retirement allowance currently estimated at **$13,867.30** per month throughout my life. I understand that there will be no continuation of my benefit upon my death.

Member Signature Date

Option One ☐

I hereby elect to receive a retirement allowance, currently estimated at **$13,652.90** per month throughout my life, with the provision that on my death any portion of my retirement allowance still due or owing will be paid to the beneficiary designated for any retirement allowance earned but not yet paid to me at the time of my death, and my accumulated contributions and earnings, less the sum of the actual monthly annuity payments of **$4,778.33** per month including any cost-of-living benefits received by me will be paid to the beneficiary designated for the refund of excess contributions if applicable.

Member Signature Date

Election of Retirement Allowance

Retiree Name

Timothy Murphy

In accordance with the provisions of the County Employees' Retirement Law of 1937 providing for the election of a retirement allowance:

I hereby elect that effective July 10, 2021*, my allowance be paid under the option indicated below by my signature.

I understand that my estimated retirement allowance and any survivor's allowance and beneficiary benefit are based on my age at retirement, on 31.42139 years of service, and on $18,897.53 monthly final average salary. The current accumulated contributions and earnings in my account totals $793,962.02. The estimated allowance amounts stated under the following options are estimates based on the information ACERA currently has available. Once you receive your final employment paycheck and all compensation, contributions, service credit and termination date is verified, your finalized allowance amount will be provided to you in a confirmation letter before your first retirement allowance is paid to you.

*Changes to the date of retirement will impact monthly retirement allowance.

Declaration of Reason for Absence of Spouse or Domestic Partner Signature

I declare under the penalty of perjury under the laws of the State of California that:

☐ I am not married, or registered with the Secretary of State under a domestic partnership.

Member Signature | Date

Beneficiary Designation Status

Based on the information you provided regarding your marital status, you are not designating a beneficiary to receive a continuance of your retirement allowance benefit.

Please review the options below and select the one best suited to your needs.

Alternative Unmodified Option ☐

I hereby elect to receive a retirement allowance currently estimated at **$14,353.00** per month throughout my life. I understand that there will be no continuation of my benefit upon my death.

Member Signature | Date

Option One ☐

I hereby elect to receive a retirement allowance, currently estimated at **$14,119.33** per month throughout my life, with the provision that on my death any portion of my retirement allowance still due or owing will be paid to the beneficiary designated for any retirement allowance earned but not yet paid to me at the time of my death, and my accumulated contributions and earnings, less the sum of the actual monthly annuity payments of **$5,029.38** per month including any cost-of-living benefits received by me will be paid to the beneficiary designated for the refund of excess contributions if applicable.

Member Signature | Date

Ran per member's request

Run Date : 07/02/2021
Run Time : 8:36 AM

ACERA
Retirement Benefit Estimate

User Id :

SSN:
Date Of Birth:

TIMOTHY A. MURPHY

Difference between 360 and 480 VCO is ~ $276.19 in retirement allowance.

Estimate Information

Separation Date	07/09/2021	**Increase Percent**		**Date**
Benefit Type	Service Retirement	**Increase Percent**		**Date**
Projected Retirement Date	07/10/2021	**Increase Percent**		**Date**
Stop Date		**Split Plan**	Yes	
Age At Retirement	[redacted]	**Separation Subtype**	N/A	
Prepared By	NVUONG	**Level Income Age**		**Amount**
FAS Date Range:		**Cash Refund**		**Amount**

Service Information

Plan Name	Regular	Sick Leave	Miscellaneous	Plan Total
General Tier II - Int	31.42149	0.00000	0.00000	31.42149
General Tier II - N/I	0.00000	0.00000	0.00000	0.00000
Total	**31.42149**	**0.00000**	**0.00000**	**31.42149**

Benefit Information

Plan Name	Multiplier		Average Salary		Benefit Amount	Age Factor		Reduced Amt
General Tier II - Int	41.94520	X	$ 19,326.43	=	$ 14,680.82 X	1.00000	=	$ 14,680.82
General Tier II - N/I	0.00000	X	$ 19,326.43	=	$ 0.00 X	0.00000	=	$ 0.00
Total			Projected with 480 hrs VCO		**$ 14,680.82**			**$ 14,680.82**

Your Payment Options and Amounts

Payment Option	Form Factor	To Retiree If Both Alive	To Surviving Beneficiary	To Retiree If Bene. Dies First	415 Test P=Pass, F=Fail
Unmodified	1.00000	$ 14,680.82	$ 8,808.49	$ 14,680.82	F / $ 0.00
Option 1	0.98407	$ 14,446.96	$ 0.00	$ 14,446.96	F / $ 0.00

Optional Retirement Beneficiary Information

Beneficiary Name	Date Of Birth	Relationship
No Continuance Paid	[redacted]	Other

Disclaimer:
While every effort has been made to provide accurate information, these figures should be regarded as estimates only. The estimate assumes full payment of any required balances (if applicable). It also assumes that any data provided by you is accurate. The final benefit calculation may differ due to data changes and/or corrections. Final benefit amounts may also be affected by changes to pension laws. Also, this estimate does not reflect reductions for benefits payable to an alternate payee. Additional beneficiary eligibility rules may apply.

ACERA
ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION www.acera.org
475 14th Street, Suite 1000, Oakland, CA 94612-1900 (800) 838-1932(510) 628-3000 FAX (510) 268-9574

June 22, 2021

Timothy Murphy
[redacted]

Dear Timothy Murphy,

This letter contains information about the estimated monthly lifetime retirement allowance you will receive if you choose to retire from ACERA on **July 10, 2021**. We estimate that you will have **31.42139** years of service credit with ACERA on this date. Please see below for estimated retirement benefit amounts:

- **Alternative Unmodified Option**: **$14,353.00** gross per month. Upon your death, your nominated beneficiary would receive a one-time lump sum payment of any remaining contributions in your account.
- **Option 1**: **$14,119.33** gross per month. Upon your death, your nominated beneficiary would receive a one-time lump sum payment of any remaining contributions in your account.

The final average salary used for the calculation of this estimate is $18,897.53 (Tier II). This final average salary includes 360 hours of vacation sellback that were paid during your highest calculated compensation period. Your total current account balance with ACERA is $793,962.02.

Included below is an additional retirement estimate which is calculated based on your projected remaining leave balances with your employer. If you use any of your projected remaining balances of vacation, PTO, and/or sick leave, the estimated retirement benefit amounts listed below may be overstated. Please see below for estimated retirement benefit amounts:

- **Alternative Unmodified Option**: **$14,404.63** gross per month. Upon your death, your nominated beneficiary would receive a one-time lump sum payment of any remaining contributions in your account.
- **Option 1**: **$14,170.96** gross per month. Upon your death, your nominated beneficiary would receive a one-time lump sum payment of any remaining contributions in your account.

The final average salary used for the calculation of this estimate is $18,965.10 (Tier II). This final average salary includes 0 hours of vacation sellback that were paid during your highest calculated compensation period AND 360 hours of projected vacation sellback that are typically paid to you on your last employer paycheck. This estimate includes your remaining sick leave balance of 0 hours which will approximately convert to an additional 0 years of service credit, bringing your total projected years of service credit to 31.42139 for the date of retirement indicated above.

These estimates are only an approximation of your retirement allowance. Your actual retirement allowance will be based on your total audited years of service credit with ACERA, your age at retirement, and your final average salary. Estimates are provided as a courtesy for your use and they are provided without benefit of a complete audit of your files or an actuarial review of the calculations.

If you plan to retire, you must submit an Application for Service Retirement, all other required forms, and all required supporting documentation prior to the date of retirement. All required forms must be submitted **within 90 days prior** to your retirement date. Please visit https://www.acera.org/applying-retire for detailed instructions on how to complete the retirement process.

If you are planning for a different date of retirement, you can use ACERA's Benefit Estimator in ACERA Web Member Services to estimate your retirement benefit amount. This Benefit Estimator provides you with an estimate immediately by using your personal account information from our retirement database to give you an accurate and personalized retirement estimate. Simply go to www.acera.org and click on the "Account Login" button (top right hand side). If you have not already created your personal account, you will need to sign up for one before you can log in. Once you are logged into your personal account, click on the Benefit Estimator link.

If you would like more information or if you have any questions, please send an email to info@acera.org.

Sincerely,

Nancy Vuong
Sr. Retirement Technician

Exhibit 4
Mark McGoldrick

Mark McGoldrick
[redacted]

October 7, 2021

Jeff Rieger, Chief Counsel
ACERA
475 14th Street
Suite 1000
Oakland, CA 94612-1900

Dear Mr. Rieger,

I write to appeal the ACERA application as to me of the changes to the "straddling" rules on how much vacation sell back (during employment) and vacation cash out (at termination) can be included in the "compensation earnable" used to calculate benefits for retirement.

I am retiring after nearly 27 years (24.5 years service credit) at the Office of the Public Defender. For the last several years, I have been the supervisor of our Homicide Unit. In that capacity, I evaluated all the homicides that came through our office and also carried my own caseload of about dozen murder cases. My intent was to retire by the end of last year (2020), but stayed on because the Covid pandemic created a staffing crisis, and my particular caseload is hard to extricate oneself from – complex cases lasting many years. Then, I planned for the end of March, but another supervisor announced he was retiring and I did not want the Office to suffer two supervisors leaving at the same time.

I am retiring at my young age, 56, for a complex of reasons. Mostly, my health and my family's well being. I broke my neck in the 1980s and am a quadriplegic (though to the untrained eye, I pass as paraplegic). I use a wheelchair. I am more vulnerable to upper respiratory infections, like Covid 19, as my lungs are paralyzed and I breath via my diaphragm. I have two young children (6 and 9) who are not old enough to be vaccinated. I cannot afford to get sick with Covid as it could greatly affect my health and independence, and I cannot ethically pass it on to my children. This has led me and my family to live more cautiously than most.

But, living cautiously at work has proven difficult. Most of my clients have refused the vaccine. Litigating in court for hours next to an unvaccinated person, among sheriff's deputies who are casual in their mask wearing, has been a real challenge. I cannot avoid the elevators in the courthouse. In the Rene C. Davidson Courthouse where I worked, the accessible bathroom is in the basement. This means I had to rely on the closed-space of the elevators much more than others. The Covid-mitigation measures in court have the side effect of reducing accessibility for me: speaking through a mask for hours; addressing a jury spread throughout the whole room instead of concentrated into the jury box; more plexiglass in my way, etc. (Oddly, the courts overall have gotten slightly less accessible over the years.) To do the job properly, I would go to the jail often to visit clients, as I did for 25 years, but since the pandemic I am very hesitant to go inside the jail where I am locked in with deputies and clients who do not take the pandemic or mask wearing seriously.

Thus, for many reasons, I cannot simply continue working to accrue more time in service and attain the retirement allowance I would have previous to the rule change.

On April 15, 2021 my wife and I met with an ACERA representative to begin the formal process. Eventually, I settled on leaving work by the end of June. My last formal day of work was July 2, 2021, although I held back a couple homicides that I am working at no cost to the County.

In late June, I received word that the ACERA Board had adopted the new "straddling" rule, announced June 21 but retroactive to June 17, 2021. It was thus adopted effective immediately, including to people like myself who were already scheduled to leave.

As you appreciate, normal rule making is prospective, announcing a rule change and allowing people to understand it and plan accordingly. I know the Board was under some pressure when it adopted the new rule, but this is problematic. By the time I learned of the new rule change, I had long relied on the existing rules and managed my vacation and leave times accordingly. My successor had been named and the complicated process of training that attorney to the new tasks of the position and transferring a homicide caseload was underway. There was no going back, no extending.

Attached please find the ACERA estimations of retirement allowance from May 6, 2021 and from August 20, 2021. The May 6 estimation was based on the possibility of my retiring by June 26, 2021, with 24.31228 years of service credit. The August 20 estimate is based on my finalized plan to retire September 18, 2021. Even though the service credit has accrued to 24.50190 years service credit, the monthly allowance under the new rule would be diminished several hundred dollars. This is not fair.

I am requesting that the new rule not apply to me.

Thank you,

Mark T. McGoldrick

Mark McGoldrick

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION www.acera.org
475 14th Street, Suite 1000, Oakland, CA 94612-1900 (800) 838-1932(510) 628-3000 FAX (510) 268-9574

May 6, 2021

Mark McGoldrick
[redacted]

Dear Mark McGoldrick,

This letter contains information about the estimated monthly lifetime retirement allowance you will receive if you choose to retire from ACERA on **June 26, 2021.** We estimate that you will have **24.31228** years of service credit with ACERA on this date. Please see below for estimated retirement benefit amounts:

- **Unmodified Option**: **$7,708.65** gross per month. Upon your death, your qualified spouse would receive **$4,625.19** gross per month.
- **Option 1**: **$7,640.11** gross per month. Upon your death, your qualified spouse would receive a one-time lump sum payment of any remaining contributions in your account.
- **Option 2: $6,790.37** gross per month. Upon your death, your qualified spouse would receive **$6,790.37** gross per month.
- **Option 3: $7,220.43** gross per month. Upon your death, your qualified spouse would receive **$3,610.21** gross per month.

The final average salary used for the calculation of this estimate is $20,145.57 (Tier 2). This final average salary includes 120 hours of vacation sellback that were paid during your highest calculated compensation period. Your total current account balance with ACERA is $488,710.99.

Included below is an additional retirement estimate which is calculated based on your projected remaining leave balances with your employer. If you use any of your projected remaining balances of vacation, PTO, and/or sick leave, the estimated retirement benefit amounts listed below may be overstated. Please see below for estimated retirement benefit amounts:

- **Unmodified Option**: **$8,315.79** gross per month. Upon your death, your qualified spouse would receive **$4,989.47** gross per month.
- **Option 1**: **$8,247.25** gross per month. Upon your death, your qualified spouse would receive a one-time lump sum payment of any remaining contributions in your account.
- **Option 2: $7,325.18** gross per month. Upon your death, your qualified spouse would receive **$7,325.18** gross per month.
- **Option 3: $7,789.12** gross per month. Upon your death, your qualified spouse would receive **$3,894.56** gross per month.

The final average salary used for the calculation of this estimate is $21,347.36 (Tier 2). This final average salary includes 80 hours of vacation sellback that were paid during your highest calculated compensation period AND 400 hours of projected vacation sellback that are typically paid to you on your last employer paycheck. This estimate includes your remaining sick leave balance of 1789.890 hours which will approximately convert to an additional 0.430262 years of service credit, bringing your total projected years of service credit to 24.74254 for the date of retirement indicated above.

These estimates are only an approximation of your retirement allowance. Your actual retirement allowance will be based on your total audited years of service credit with ACERA, your age at retirement, and your final

average salary. Estimates are provided as a courtesy for your use and they are provided without benefit of a complete audit of your files or an actuarial review of the calculations.

If you plan to retire, you must submit an Application for Service Retirement, all other required forms, and all required supporting documentation prior to the date of retirement. All required forms must be submitted **within 90 days prior** to your retirement date. Please visit https://www.acera.org/applying-retire for detailed instructions on how to complete the retirement process.

If you are planning for a different date of retirement, you can use ACERA's Benefit Estimator in ACERA Web Member Services to estimate your retirement benefit amount. This Benefit Estimator provides you with an estimate immediately by using your personal account information from our retirement database to give you an accurate and personalized retirement estimate. Simply go to www.acera.org and click on the "Account Login" button (top right hand side). If you have not already created your personal account, you will need to sign up for one before you can log in. Once you are logged into your personal account, click on the Benefit Estimator link.

If you would like more information or if you have any questions, please send an email to info@acera.org.

Sincerely,

Patricia Ortega
Sr. Retirement Technician

ACERA
ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION www.acera.org
475 14th Street, Suite 1000, Oakland, CA 94612-1900 (800) 838-1932 (510) 628-3000 FAX (510) 268-9574

August 20, 2021

Mark Mc Goldrick
[redacted]

Dear Mr. Mc Goldrick,

An estimate of the Unmodified Retirement Allowance that you are eligible to receive beginning **September 18, 2021** is **$8,089.35** per month. Upon your death, your qualified spouse would receive **$4,853.61** per month. We estimate that you will have **24.50190** years of service on this date. If you plan to retire on this date, you must submit an Application for Service Retirement prior to the date of retirement, however, no more than 90 days in advance.

The final average salary used for this estimate is $20,720.73 (Tier II). It includes:
* 240.0 hours Vacation Sell/ Vacation Cash Out (Check your MOU for maximum allowable)

These estimates are only an approximation of your retirement allowance. Your actual retirement allowance will be based on an audit of your service record and will use total days of actual membership in the retirement system, age at retirement and final average compensation. Estimates are provided as a courtesy for your use and they are provided without benefit of a complete audit of your files or an actuarial review of the calculations.

If you have planned other dates of retirement than the above, you can use ACERA's Benefit Estimator in our Web Member Services. This Benefit Estimator can provide you with an estimate immediately by using your personal account information from our retirement database to give you an accurate personal retirement estimate(s). Simply go to www.acera.org and click on the "Your Personal Account" button (top right hand side). If you have not already created your personal account, you may need to complete this step first. Once you are in your personal account, click on the Benefit Estimator link.

If you would like more information or have additional questions, please feel free to contact ACERA at 510-628-3000.

Sincerely,

ACERA Staff

Exhibit 5
Ronald Rettig-Zucchi

To Whom It May Concern: October 30, 2021

On June 25, 2021 I retired after almost 22 years of working for the county as a Behavioral Health Clinician. I served school age special education students and their families in their homes and at several Alameda County school districts. It was meaningful and engaging work each and everyday.

The most surprising and disappointing day was my last day of work. That day at 10:00 AM I got a call from my ACERA retirement counselor informing me that the Board of Retirement had decided on June 17, 2021 to remove the straddling process from the calculation for using accrued vacation to calculate compensation earnable and that it was enacted on June 18, 2021. It was explained to me that this would mean I could only use 3 weeks of vacation time accrued instead of the four weeks that I had submitted in the calculation of my monthly retirement allowance. This change in the calculation meant that my monthly allowance would be reduced by about $60 and yearly about $720. The irony is that I had contacted ACERA in February 2021 with my plan to retire in late March 2021 as many retirees do each year in order to receive the cost of living increase. I did not want to terminate with my school age clients who were in the process of dealing with the social and academic COVID impacted school year, distance learning, graduations, promotions, and stressed out parents and teachers. I made the decision to continue to serve until the natural break at the end of the school year in June. I calculated that with the extra time in service and 4 weeks of vacation time included in compensation earnable that my monthly allowance would be just about the same as if I retired in March and got the cost of living increase usually afforded to those that are retired on April 1.

My choice to remain in service and provide care for my clients rather than take the most financially secure path to retirement was negatively influence by the lack of information shared by the Board of Retirement with the ACERA administration and retirees. Someone who is in the process of planning for retirement should be made aware in advance of the direction the Board is leaning so that person can make the best financial decisions. Past performance of the Board did not give any indication that they were about to change their practices. Communicating their process and inclination to change to the appropriate ACERA administration could have informed retirement decisions for many.

In the minutes from recent meetings of the Board of Retirement it was consistently observed that the topic of ending the straddle process was not discussed in an open session. It was indicated that the Board was meeting with legal counsel in a closed session and there was no reporting of the content of the closed session. If some information had been shared related to the inconsistency of the current straddle practice with applicable law this would have informed my decision to delay my retirement. If the Board had communicated with the ACERA administration they could have provided adequate counseling to those planing on retirement. Instead of continuing to gamble on the past performance of the Board's practice of allowing the straddle process as they had done for years I could have made the financially responsible decision to retire in March and qualify for the usual cost of living increase. This path would have financially equalled or surpassed the amount of allowance I anticipated by using the straddle to include 300 hours of vacation rather than 225.

The Board's actions have caused me to suffer financial loss. The secretive practice of conducting closed sessions and then reporting nothing related to the content of the meeting or the changes being considered made it impossible for pending retirees like me to make sound financial decisions. If I had an inclination of the straddle discussion coming from the Board and therefore the risk of delaying my retirement from March to June I would have stayed with my earlier decision to retire in March 2021and gained the financial benefit of the cost of living increase. I am not lamenting the loss of the 75 hours due to the change in straddle process. I am suffering financially from the Board's lack of information sharing that prevented me from making a sound decision.

Sincerely,

Ronald M. Rettig-Zucchi

Ronald M. Rettig-Zucchi

Exhibit 6
Vella Black-Roberts

November 19, 2021

Jeff Rieger
Chief Counsel
ACERA
475 14th St., Ste. 1000
Oakland, CA 94612

Subject: Your Letter Re: ACERA Board of Retirement's December 16, 2021 Meeting

Dear Mr. Rieger:

Thank you for bringing this matter to my attention. Unfortunately, I won't be able to participate in the ACERA Board's December 16, 2021 meeting. However, I would like to go on record in support of the assertion of the other ACERA members referenced in your letter, that ACERA should calculate their benefit allowances under the "old rules under which they planned their retirements."

Furthermore, I wish to have my name added to the list of claimants petitioning the ACERA Board on December 16th regarding this matter.

Like me, some (if not all) of those claimants may have opted to delay their retirement dates because they played key roles in Alameda County's COVID-19 response efforts and felt obligated to the County and County residents to stay on their jobs until the virus was considered under control. Even if my scenario is not applicable to all claimants, I believe it provides the ACERA Board with one more credible reason to honor the claimants' (including yours truly) request.

Finally, while the projected increase in my ACERA benefits will be only $89 per month if the ACERA Board approves this request, it's important that the Board remember every additional dollar of income makes a difference to ACERA retirees—especially those of us residing in the Bay Area with its high cost of living.

Sincerely,

Vella K. Black-Roberts, MPH, RDN, CLE
Alameda County Public Health Dept. (Ret.)

Exhibit 7
Darryl Cheung

From: Darryl Cheung [redacted]
Sent: Thursday, December 9, 2021 8:52 AM
To: Jeff Rieger
Subject: Re: Your ACERA Benefits

Mr. Rieger, I am sorry I missed your deadline, I meant to send the following at the beginning of the week. If you cannot include my note, perhaps you can include my name as a person requesting consideration for the following. thank you, Darryl Cheung

November 28, 2021

ACERA Board and Mr. Jeff Rieger,

Please add my name to the group of ACERA members who feel that their allowances should be calculated under the old rules.

When I began my retirement planning over a year ago, I was using my projected income under the old rules. I still have a child in school and was depending on the higher compensation. We now need to borrow more money to make the school tuition payments.

If I had sold my vacation hours during the third year of calculation, I would be paid at the highest rate. My cash out rate should be the same since, I cashed out in my third year. Vacation is determined with the highest salary rate available.

If I had filed my papers on June 17, 2021 and ACERA had accepted my papers on same date and retired on June 17th, I would have received the then current compensation, which was higher compared to the new way of calculating.

I did file my papers on June 17, 2021. ACERA accepted my papers on June 17, 2021. I should be entitled to the compensation calculations based on what formula was used as of that day.

sincerely,
Darryl Cheung

Exhibit 8
June 17, 2021
Memorandum

ACERA

Office of the Chief Counsel

To: ACERA Board of Retirement

From: Jeff Rieger, Chief Counsel

Meeting: June 17, 2021

Subject: "Straddling" and Related Issues

Note: This memorandum is substantially the same as the memorandum that was presented to the Operations Committee on June 2, 2021, but this memorandum includes additional information that was discussed during the June 2, 2021, meeting. The additional information includes Exhibit J and Exhibit K hereto, which are letters that were submitted to the Operations Committee.

INTRODUCTION

The Supreme Court's opinion in *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 209 Cal.5th 1032, includes a statement that some believe requires ACERA to change its practices with respect to how much leave sell back and cash out[1] may be included in Tier 1, 2 and 3 members' "final compensation." The California Attorney General ("AG"), which represents the State in that litigation, has expressed an intent to seek a court order requiring ACERA to eliminate the practice of "straddling," which is described below.

Staff is bringing the practice of straddling, and several other practices relating to inclusion of leave sell back and cash out in members' final compensation, to the Board, for consideration, so that the Board can decide whether any changes to ACERA's current practices are warranted.

BACKGROUND OF "STRADDLING"

ACERA members' retirement allowances are calculated, in part, based on their "final compensation." For Tier 1, 2 and 3 members, "final compensation" is comprised of the member's highest one-year (Tiers 1 and 3) or three-year-average (Tier 2) of "compensation earnable." Gov't Code § 31461 defines "compensation earnable" to include some leave sell back and cash out.

In September 2012, the Legislature passed AB 197, which amended the definition of "compensation earnable," effective January 1, 2013, so that amounts received from leave

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[1] Leave "sell back" is when an employee sells the value of accrued leave hours to the employer during service. Leave "cash out" is when an employee cashes out the value of accrued leave at termination. Gov't Code § 31461 allows the member to include both types of pay in "compensation earnable," so long as the amount does not exceed that which was "earned and payable" in "each 12-month period" of the final compensation period.

sell back and cash out included in final compensation cannot exceed "that which may be earned and payable in each 12-month period" of the final compensation period.

The question at hand is whether AB 197 eliminated a practice informally known as "straddling." Here is how straddling works:

- Assume that a Tier 2 member with a three-year "final compensation" period earns 160 hours of vacation per year of service and may sell back 80 hours per fiscal year, per the member's MOU.

- If that member retires January 1, 2021, the three-year "final compensation" period from January 1, 2018, to January 1, 2021, will "straddle" four fiscal years (2017-2018, 2018-2019, 2019-2020 and 2020-2021). This enables the member to sell back 80 hours of leave <u>four</u> times, totaling 320 hours, in the <u>three</u>-year "final compensation period."

- In two of the 12-month periods, the member earned 160 hours and could sell back 80 hours. In those 12-month periods, 80 hours of leave were "earned and payable" under the common usages of those words. In one of the 12-month periods, the member earned 160 hours and could sell back 160 hours (80 hours twice). In that 12-month period, 160 hours were "earned and payable" under the common usages of those words.

- The total amount of "compensation earnable" the member earned in the three-year period is divided by three to determine the three-year-average "final compensation." Thus, the value of 106.67 hours (1/3 of 320) is included in the member's "final compensation." Without straddling, the member could include only the value of 80 hours (1/3 of 240).[2]

ACERA has allowed the practice of straddling ever since implementing AB 197 in July 2014, so long as the amount of included leave does not exceed the amount that was "earned and payable" in the final compensation period.[3] No party sought to eliminate straddling in the *ACDSA v. ACERA* litigation (or otherwise) until 2021 when the AG expressed an intent to pursue a claim that AB 197 eliminated all versions of straddling, based on a paragraph that appears in the Background section of the Supreme Court's opinion in *ACDSA v. ACERA*.

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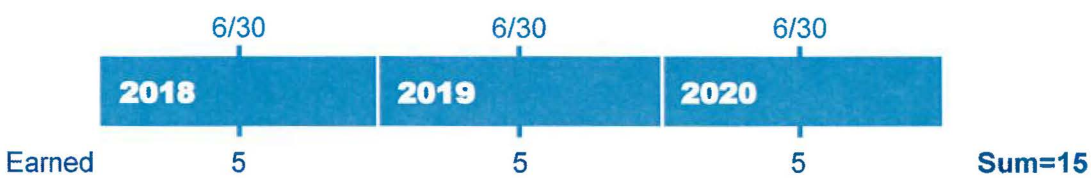
[2] With straddling, Tier 1 and 3 members can include two years of sell back or cash out in a one-year "final compensation." Tier 4 members cannot include any leave sell back or cash out in their "final compensation," so straddling has no impact on Tier 4 members.

[3] A court order prevented ACERA from applying AB 197 through July 11, 2014.

THE HISTORY OF STRADDLING AT ACERA

1997-2003: In *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, the California Supreme Court ruled that leave time converted to cash was included in "compensation earnable." Litigation proceeded across the state regarding CERL systems' implementation of *Ventura*. Some systems settled and some litigated to conclusion. *See In Re Retirement Cases* (2003) 110 Cal.App.4th 426.

1999-2014: ACERA entered into and followed a court-approved settlement agreement. Exhibit A (without attachments). Under that settlement agreement, leave earned during the final compensation period was included in a member's final compensation, if the leave could either be sold back during service or cashed out at termination. *Id.* at pp. 7, 11. The following chart shows how ACERA would determine maximum inclusion of leave converted to cash for a member who earned five weeks of leave per year of service and could sell back three weeks of leave per fiscal year (the number of "payable" weeks during the final compensation period was not relevant under the settlement agreement).



2003-2004: In *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003)110 Cal.App.4th 426, the courts held that payments payable only at termination cannot be included in final compensation. ACERA did not follow *Salus* and *In Re Retirement*, because the Settlement Agreement provided that later court rulings would not impact the binding terms of the Settlement Agreement. Exhibit A, at Par. 4, 6, 7 and 8.

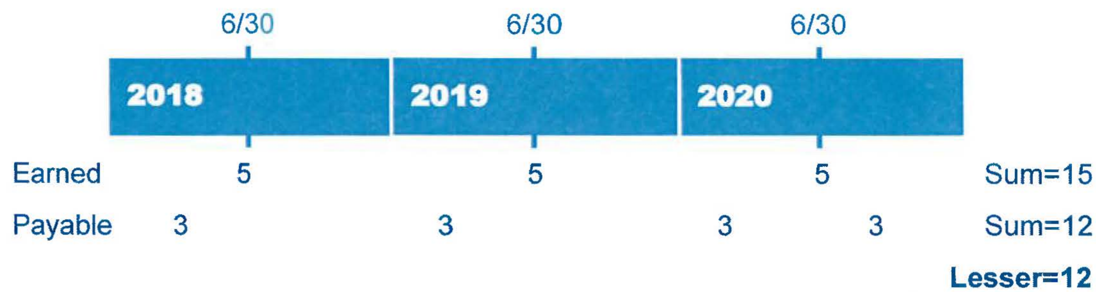
September 12, 2012: AB 197 was passed, effective January 1, 2013, providing that leave converted to cash could be included only if it was both "earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid." The amendments to Gov't Code § 31461 were expressly "intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003)110 Cal.App.4th 426."

December 2012-July 2014: After ACERA announced its intent to comply with AB 197, the trial court ordered a stay in response to litigation claims that the law was unconstitutional. ACERA took a neutral position on the constitutional question. The State intervened to argue that AB 197 is constitutional, but did not seek an order eliminating straddling. Exhibit B, at Par. 13. ACERA's counsel sought guidance from the trial court on straddling, but the court refused to provide guidance. Here is how the trial court later described that history:

> [T]he record before Judge Flinn did not focus on the straddling issue; when it was raised at the November 19, 2013 case management conference he stated he had

not decided the straddling issue in his Decision Upon Preliminary Issues, and his Final Decision did not address straddling either. Thus, it cannot be said that Judge Flinn decided the straddling issue. Exhibit C, at p. 8.

July 2014-Present: The trial court lifted the stay and issued a writ requiring ACERA to implement AB 197. Exhibit D. ACERA followed its understanding that AB 197 (a) codified the rulings in *Salus* and *In Re Retirement* regarding termination leave cash out and (b) added the "payable" requirement. Since July 2014, ACERA includes termination leave cash out only to the extent that the amount of cashed out leave hours could have been sold back during the final compensation period before termination. The following chart shows how ACERA has determined maximum inclusion of leave cash out for a member who earns five weeks of leave per year of service and can sell back three weeks of leave per fiscal year, since July 2014.



AG's Briefing in *ACDSA v. ACERA*: In some portions of the AG's briefing to the Supreme Court, the AG directly criticized straddling, but never explained why ACERA's practices purportedly fail the "earned and payable" requirement under the common usages of those terms. In other parts of the AG's briefing to the Supreme Court, the AG made arguments that clearly would permit the type of straddling ACERA allows. For example, the AG wrote: "Properly understood within that context, the phrase 'an amount that exceeds that which may be earned and payable in each 12-month period' refers to *leave amounts* exceeding what may be accrued and cashed out during the final compensation period." Exhibit E at p. 35 (italics in original). ACERA's practices since July 2014 align with that statutory construction of AB 197 in the AG's brief, as illustrated in the graphic immediately above.

July 2020: While holding that AB 197 was constitutional (the issue that was before the Supreme Court), the Supreme Court made what appear to be contradictory statements as they pertain to straddling (which was not before the Court).

- In the Background section, the Court suggested straddling is eliminated.

> The State points to an additional function of section 31461, subdivision (b)(2) and (4). Prior to PEPRA's amendment, even in counties that limited the amount of leave time that could be cashed out in a calendar year, employees were able to double the amount of cashed out leave time received during a final compensation year by designating a final compensation year that straddles two calendar years, for example, July 1 through June 30. By cashing out leave time in the second half of the prior calendar year and the first half of the subsequent calendar year, a retiring

employee could double the amount of cashed out leave time received in the final compensation year. By limiting the inclusion of cashed out leave time to that "earned and payable" in a "12-month period," subdivision (b)(2) and (4) prevent this practice. *Alameda,* 209 Cal.5th at 1062-63.[4]

- Then, in the Discussion section, the Court provided a definition of "earned and payable" that permits straddling:

  Although, in practice, an employee can accrue only a limited amount of leave time in a final compensation period, there is no similar practical constraint on the amount of leave time that can be cashed out during that time. The Court of Appeal's interpretation therefore renders subdivision (b)(2) pointless,.... A better reading requires "earned and payable" to refer to the amount of leave time that can be accrued during the final compensation period. *Id.* at 1096, fn.31.[5]

Since July 2020: At least five CERL systems (San Bernardino, Ventura, Sacramento, Stanislaus and Mendocino) have eliminated straddling, reportedly based on the statement in the Background section of the Supreme Court opinion. The Ventura system is in litigation regarding its decision to eliminate straddling. In that litigation, the primary plan sponsor, Ventura County, has opposed the retirement board's elimination of straddling. At least two CERL systems had eliminated straddling before the Supreme Court's opinion (Marin and Contra Costa). In many other CERL systems, straddling is not possible (whether or not the system would allow it), because the employers either do not allow leave sell back or the employers require members to wait more than 12 months between sell backs. Based on informal polling of other CERL systems, we are not aware of any other CERL system that currently permits straddling, except for one system (San Mateo) that may allow straddling for a small subset of members in that system who are able to sell back accrued leave. In the remand proceedings in the *ACDSA v. ACERA* litigation, the AG has cited the above quote from the Background section of the Supreme Court's opinion to claim that AB 197 eliminated all straddling. Exhibit F. The AG has not provided

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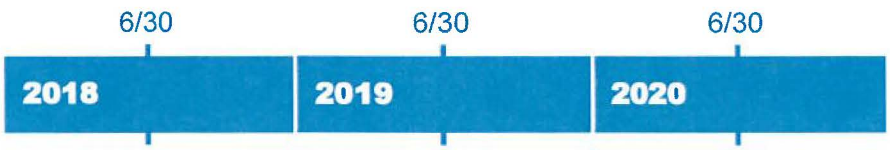
[4] The Background section of an opinion is not where a court typically reaches legal conclusions. The Background section is where the court describes the factual background and the parties' contentions in the case. Here, the Supreme Court begins the above quote with: "The State points to...", which is not indicative of a legal conclusion based on the Supreme Court's consideration of opposing arguments on a disputed question of law. Rather it is indicative of a recitation of a parties' untested contention. Further, because the Supreme Court did not provide any numbers with its statement, it is not clear whether the Court was addressing all straddling or just straddling that results in a member receiving more than was "earned" in the applicable period. The latter reading comports more with the Court's later discussion in the Discussion section.

[5] The Supreme Court's focus on leave accrual appears throughout the opinion. *See e.g., Alameda,* 209 Cal.5th at 1096 ("Restricting the inclusion of such payments to those earned in the final compensation period promotes the underlying theory established by the general language of section 31461. Leave time earned prior to the final compensation period is, necessarily, awarded in return for work performed prior to that period.") A similar focus on leave accrual is also found in the early Legislative History of AB 197. *See, e.g.,* Exhibit G, at Section 1(c). (Stating a legislative purpose: "To prohibit final settlement pay and multiple year accruals of vacation time, annual leave, personal leave, or sick leave from being included in retirement calculations") (underlining added).

a definition of the phase "earned and payable" to support that position. The following chart shows how ACERA would have to determine maximum inclusion of leave cash out for a member who earns five weeks of leave per year of service and can sell back three weeks of leave per fiscal year, if all straddling is impermissible.



Earned	5	5	5	
Payable	3	3	3	
Lesser	3	3	3	**Sum=9**

RECENTLY IDENTIFIED ISSUES WITH ACERA'S PRACTICES

In the process of analyzing the straddling issue, three additional issues with ACERA's practices have come to light.

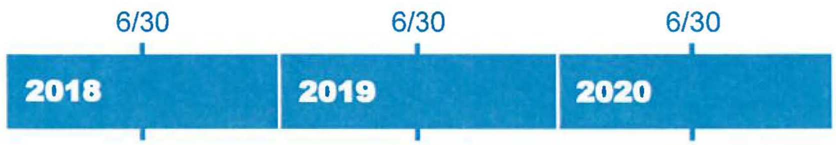
- ACERA does not account for the statutory language "in each 12-month period during the final average salary period" when determining the actual number of hours of sell back or cash out that may be included in a member's final compensation. Instead, ACERA aggregates the total amount "earned and payable" throughout the entire final compensation period. This arguably results in the inclusion of too many hours of leave sell back or cash out in some members' final compensation. Although this practice comports with the Supreme Court's definition of "earned and payable" in footnote 31 of its opinion ("amount of leave time that can be accrued during the final compensation period") it does not seem to be consistent with the "in each 12-month period" language of the statute.

- ACERA includes in final compensation the value of the leave hours at the highest salary rate available to the member for sell backs or cash outs (usually cash out at termination), rather than the salary rate that applied when those hours were actually "payable" in each "12-month period" of the final compensation period. The statute refers to the "amount" of "payments" (not the amount of leave hours) that are payable in each 12-month period. If a member receives a raise in the last three years before retirement, ACERA's current practice arguably results in a slight overstatement of the member's final compensation.

- When determining how much leave was "earned," ACERA applies the member's leave accrual rate at retirement to the entire final compensation period, rather using the member's accrual rates in each of the 12-month periods in the final compensation period. For example, if a Tier 2 member accrues three weeks of vacation throughout most of the final compensation period, but starts accruing four weeks annually right before retirement, ACERA assumes that the member earned

> 12 weeks of vacation (three four-week increments) during the final compensation period, when the member earned just a bit more than nine weeks of vacation.

The following chart shows how ACERA would determine inclusion of leave cash out for a member who earns <u>five</u> weeks of leave per year of service and can sell back <u>three</u> weeks of leave per fiscal year, under a reading of the statute that accounts for what is "earned and payable" in each 12-month period (assuming straddling is permitted at all).



Earned	5	5	5	
Payable	3	3	3 + 3 = 6	
Lesser	3	3	5	**Sum=11**

ANALYSIS

The Board Should Exercise Its Best Judgment On The Straddling Question

For the reasons explained below, the question of whether any straddling practice is permitted under AB 197 is uncertain. The plain language of Gov't Code § 31461 appears to permit straddling so long as the member does not include more that was earned in the applicable period, but several other factors support the conclusion that the courts may find that the statute does not permit straddling. Under these circumstances, the Board should consider all relevant information in this open and public process, give due consideration to this memorandum, as well as the AG's arguments and any other parties' input, and then exercise its best judgment.

<u>The Plain Language of AB 197 Appears to Allow for Straddling</u>

A court analyzing ACERA's governing law described the rules of statutory construction:

> When engaging in statutory construction, we begin with the statutory language because it is generally the most reliable indication of legislative intent. If the statutory language is unambiguous, we presume the Legislature meant what it said, and the plain meaning of the statute controls. If the language is susceptible of multiple interpretations, the court looks to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. After considering these extrinsic aids, we must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences. Pension legislation must be liberally construed and applied to the end that the beneficent results of such legislation may be achieved. Any ambiguity

> or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute. *Irvin v. Contra Costa County Employees' Retirement Assn.* (2017) 13 Cal.App.5th 162, 170-71 (internal marks and citations omitted).

Here, the plain language of the statute appears to allow for straddling. If a member earns 160 hours of leave per year of service and is able to sell back 160 hours of leave in that same year, the amount was "earned and payable" in that "12-month period" under the plain meaning of "earned and payable." The fact that the member cashed out 80 hours in two different <u>fiscal</u> years makes no difference under the plain meaning of a statute that refers to each "12-month period" in the final compensation period. The statue does <u>not</u> refer to how much is "payable" in a <u>fiscal</u> year.

If the Legislature intended to eliminate straddling, it could have done so explicitly by either (a) tying the concept of "payable" to <u>fiscal</u> years, rather than each 12-month period of the final compensation period, or (b) defining straddling and expressly prohibiting it. The Legislature did not do either of those things. To the contrary, in Gov't Code § 31461, the Legislature cited *Salus* and *In Re Retirement Case* as the guiding precedent. Those cases were about termination pay, <u>not</u> straddling. I cannot find any form of the word "straddle" anywhere in over 1300 pages of Legislative History materials that I obtained from Legislative Intent Services (a company that compiles Legislative History).[6] Indeed, the Bill Analysis stated the Legislature's intent: "Clarify the intent of the conference report with regard to current members of [CERL] retirement systems ... by specifying that payments for termination pay and leave, as specified, may not exceed what is earned in a year and payable, <u>consistent with the applicable court cases in regard to this issue</u>." <u>Exhibit H</u>. Further, in the legislative process, the Legislature initially included the "payable" requirement, but that requirement was missing in a later version of the bill, and then it was added back. The Legislative History explains: "The second amendment [adding "payable"] clarifies provisions designed to reign in pension spiking by current '37 Act retirement system members to the extent allowable by court cases that have governed compensation earnable in that system since 2003. These cases allowed certain cash payments to be included in compensation for the purpose of determining a benefit, but only to the extent that the cash payments were limited to what the employee earned in a year. This amendment is needed due to a concern that was raised that, as written, the conference report could, increase the ability of some current employees to spike their pensions rather than achieving the intended outcome of reducing spiking opportunities." *Id.* If the Legislature had not included "payable," AB 197 would not have required ACERA to change its practices under the settlement agreement. When ACERA changed its practices in July 2014, it added the "payable" requirement.

Further, no participating employer has expressed any objection to straddling in the *ACDSA v. ACERA* litigation or at the June 2, 2021, Operations Committee meeting. And, the employers could eliminate straddling at any time by requiring their employees to wait more than 12 months between leave sell backs, but the employers have not done that.

[6] More Legislative History may be available after the preparation of this memorandum (the pandemic caused delays), but it is unlikely that any additional materials will be materially different.

Finally, the California Supreme Court has explained: "Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute." *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 490. Here, ACERA has allowed straddling, which is in the members' favor, ever since implementing AB 197 in July 2014.

For all of these reasons, straddling appears to be permitted, based on the plain language of Gov't Code § 31461 and its Legislative History.[7]

<u>Other Factors Weigh Against Straddling</u>

Notwithstanding the fact that the plain language and Legislative History of Gov't Code § 31461 appear to allow for straddling, there are several factors that suggest that the courts may rule that AB 197 eliminated straddling.

First, it is undeniable that the language in the Background section of the Supreme Court opinion appears to state that straddling is not permitted. It may be difficult to convince courts that the Supreme Court was either (a) reciting the State's argument on an issue that was not before the Supreme Court, but used language that read like a legal conclusion, or (b) referring only to straddling that causes the member exceed what was "earned" in the applicable period.

Second, the larger theme throughout the Supreme Court's opinion is that AB 197 was designed to prevent practices that result in the inclusion of amounts "final compensation" that a member could not regularly receive throughout a career. *See Alameda*, 209 Cal.5th at 1094-1098. Throughout a member's career, a member can receive <u>on average</u> only one fiscal year's worth of leave sell back per 12-month period. Allowing a member to include two years' worth of sell back or cash out in one 12-month period of the final compensation period is arguably the kind of perceived "manipulation" that AB 197 was designed to eliminate. Thus, a finding that AB 197 eliminated straddling arguably "comports most

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[7] In defending its decision to eliminate straddling, the Ventura retirement system has argued that the word "each" in the phrase "that which may be earned and payable in <u>each</u> 12-month period" demonstrates the Legislature's intent to allow only the amount of leave sell back or cash out that could have been <u>uniformly</u> converted to cash in <u>all three</u> of the 12-month periods of a three-year final compensation period. A Contra Costa County Superior Court judge also read the word "each" in that manner, although that judge (a) acknowledged that "the statutory syntax is awkward" under that reading and (b) did not consider the alternative reading of "each" discussed in this memorandum. *See* <u>Exhibit I</u> at 14:22-23. I believe there are three problems with this argument. First, the word "each" does not necessarily refer to multiple things that must be uniform. If the Legislature had intended uniformity across all three 12-month periods, it should have used some form of the word "uniform" in the statute. Second, the amounts paid during "each 12-month period" of the final compensation period are <u>expected</u> to vary, because (a) even if a member can sell back the same number of leave hours, the rate for converting leave hours to cash ordinarily will increase from year to year as the member's salary increases, and (b) a member's leave accrual rate and/or amount the member can sell back may change during the final compensation period. Third, many members (including ACERA's Tier 1 and 3 members) have a one-year final compensation period. The argument that focuses on the word "each" falls apart when applied to one-year final compensation, because there is only one "12-month period" and that one "12-month period" can include two fiscal years' worth of leave sell backs.

closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute…." *Irvin*, 13 Cal.App.5th at 170-71.

Third, the trend of other retirement systems eliminating straddling and the fact that AG opposes straddling will make it more challenging to defend the practice. It is worth noting that, in a non-final ruling, a court held that the board of retirement in Contra Costa County had authority to eliminate straddling (this does not mean it was required to do so). That court found reasonable that board's reading of AB 197 under which "payable" leave hours accrue incrementally. Exhibit I. Under that theory, if a member can sell back 80 hours per fiscal year, the member is only "earning" 80 "payable" hours per year of service and therefore cannot include more than 80 hours in a 12-month period, even if the member was able to sell back 160 hours that 12-month period.[8]

In sum, the plain meaning and Legislative History of the words in Gov't Code § 31461 seem to allow for straddling, but several other factors cut the other way. Under these circumstances, there is no clear correct answer and therefore the Board should exercise its best judgment on the straddling question, after giving due consideration to this memorandum and all other information before the Board in this open and public process.

Three ACERA Practices Should Be Changed

As explained previously, in the process of analyzing the straddling issue, it has come to light that three ACERA practices do not appear to comport with the best reading of Gov't Code § 31461. The recommended change are:

Recommend Change No. 1: For Tier 2 members, if ACERA continues to allow straddling, ACERA should determine how much leave time was earned and payable in each 12-month period of the final compensation period, rather than aggregating how much is earned and payable in the entire final compensation period. This issue does not impact Tier 1 or Tier 3 members because they have only one 12-month period in their final compensation period. This change also will not impact the majority of Tier 2 members, but for some Tier 2 members this change will result in either one or two fewer weeks of leave sell back or cash out in their three-year final compensation period (i.e., 1/3 week or 2/3 week less in their final compensation).

Recommended Change No. 2. When determining the value of leave sell back or cash out, ACERA should use the amount that the member would have received if the member had completed the sell back in each 12-month period of the final compensation period, rather than using the highest rate the member was able to sell back or cash out (usually cash

[8] I believe this is the best argument to support the view that AB 197 eliminated straddling. A review of current MOUs, however, shows that leave hours accrue incrementally, but "payable" hours are capped by fiscal year. *See* https://www.acgov.org/hrs/divisions/elr/mou.htm. Further, the Supreme Court's analysis of the phrase "earned and payable" undermines a payable-hours-accrued-incrementally theory, because the Supreme Court found that "earned" and "payable" are distinct concepts: "Although, in practice, an employee can accrue only a limited amount of leave time in a final compensation period, there is no similar practical constraint on the amount of leave time that can be cashed out during that time." *Alameda*, 209 Cal.5th at 1096, fn.31.

out at termination). This should have a relatively minor impact on members' retirement allowances.[9]

Recommended Change No. 3. When determining how much leave was "earned," ACERA should use the actual accrual rate throughout the final compensation period (which may change), rather than apply the accrual rate at termination to the entire final compensation period. This change will impact only those members whose accrual rate changes during the final compensation period. Indeed, it will impact on a portion of those members, because the "payable" limitation more often is the cap than the "earned" limitation.

SUMMARY OF RECOMMENDATIONS

1. After considering all of the information the Board may receive in this open and public decision-making process, the Board exercise its best judgment as to whether ACERA should continue to permit straddling for members who retire after the Board makes its decision.

2. Direct staff to make the following changes for members who retire after the Board makes its decision:

    - If ACERA continues to permit straddling, direct staff to account for the amount of leave time that was "earned and payable" in each "12-month period," rather than aggregating the amount that is "earned and payable" throughout the entire final compensation period.

    - Whether or not ACERA continues to permit straddling, direct staff to determine the amount that was "payable" in each 12-month period by using the rate of pay that applied in each 12-month period.

    - Whether or not ACERA continues to permit straddling, direct staff to determine how much leave was actually "earned" throughout each 12-month period, rather than attributing the member's accrual rate at termination to the entire final compensation period.

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[9] For example, using ACERA's current practices that include straddling, assume that a Tier 2 member could sell back two weeks of vacation per fiscal year. Further assume that the member's salary was $100,000 in the first 12-month period of the final compensation period, $105,000 in the second 12-month period, and $110,000 in the third 12-month period. Under current practices, if the member cashed out eight or more weeks at termination, ACERA will include eight weeks at the $110,000 salary. This results in $5,641 in the member's final compensation (value of eight weeks with an $110,000 salary, divided by 3). Under the proposed change, the member would likely have two weeks at a $100,000 salary, two weeks at a $105,000 salary and four weeks at an $110,000 salary (the straddle year). This results in $5,449 in the member's final compensation (value of eight weeks at an average salary of $106,250, divided by 3). That is a $192 difference in final compensation. If, for example, the member's allowance is 50% of final compensation, the annual difference will be $96 (before cost of living increases).

NEW BUSINESS

7.B. Discussion and possible motion to approve issuance of a Request for Information for Medical Advisor and Disability Claims Management Services.

MEMORANDUM TO THE OPERATIONS COMMITTEE

DATE: December 1, 2021

TO: Members of the Operations Committee

FROM: Sandra Dueñas-Cuevas, Benefits Manager

CC: Kathy Foster, Assistant Chief Executive Officer

SUBJECT: **Medical Advisor & Disability Claims Management Services RFI**

ACERA plans to release a Request for Information on February 1st to service providers who could potentially provide both Medical Advisor and Disability Claims Management services.

Managed Medical Review Organization (MMRO) has now provided services to ACERA since May of 2017. Under MMRO's oversight of disability retirement claims management, recommendation response to the Board has decreased from one year to under five months on average. Staff, trustees', and members' confidence in the timeliness of the disability application process have improved and Staff believes service under this platform should continue. In accordance with the Service Provider Policy, Staff is recommending the Board to issue a Request for Information (RFI) for Medical Advisor and Disability Claims Management. An RFI will allow ACERA to determine if there are other service providers that may be able to offer a more efficient, cost effective and member support platform in the process of claims management and medical advisory.

Recommendation

Staff recommends that the Operations Committee recommend to the Board of Retirement that the Board issue a RFI for Medical Advisor and Disability Claims Management Services to determine if new service providers have emerged in the industry space that will meet the business needs of the organization.

Attachments: Proposed RFI Timeline

Medical Advisor and Disability Claims Management Services

Request for Information Timeline

ACTION	TARGET DATE	RESPONSIBILITY
Create RFI and Cover Letter	January 24	Staff
Send RFI & Cover Letter to Service Providers	February 1	Staff
Questions, Clarification and Comments Deadline	February 15	Service Provider
Due Date for Information Submission	March 1	Service Provider
Review submitted Information	March 3	Staff
Notify Finalists	March 7	Staff
Check Service Provider References	March 10	Staff
Interviews	March 15	Staff
Recommendation from Operations Committee to Board of Retirement	April 1	Staff
Notify Finalists of Service Provider Selection	April 4	Staff
Negotiate Contract	April 11	Staff/Service Provider
Send Termination Letter to Current Consultant (if applicable)	April 15	Staff
Send Provider of Record Letter to Stakeholders	April 29	Staff
New Provider meets with Staff to review plans and outline service expectations	May 2	Staff/Service Provider
CONTRACT EFFECTIVE DATE:	**June 1, 2022**	

<u>NEW BUSINESS</u>

7.C. Board Election Results.

NEW BUSINESS

7.D. Chief Executive Officer's Report.

ACERA

Office of the Chief Executive Officer
Office of Administration

DATE: December 16, 2021

TO: Members of the Board of Retirement

FROM: Dave Nelsen, Chief Executive Officer DN

SUBJECT: Chief Executive Officer's Report

Senior Manager Recruitment

Assistant CEO for Operations: This is to fill the duties due to Margo's acceptance of the position at Sacramento CRS. We have closed the recruitment and are narrowing the field to those we will interview. We expect to interview shortly and hire in late January.

Committee/Board Action Items

ASSIGNED FOLLOW-UP ITEMS				
Follow-Up Board Item	**Assigned Senior Leader**	**Estimated Completion Date**	**Completion Date**	**Notes**
Develop ACERA Re-Opening Plan.	Dave Nelsen	July 2021	On-going	The general guidelines of the Plan have been developed and implemented. We are responding to changes as necessary based on new information.

Conference/Event Schedule

None.

Other Items

COVID-19 Responses

Recently, the County did not vote to adopt the new regulation that required all employees to be vaccinated for COVID-19. While this may be revisited, at this time there is no vaccine requirement. There was a notification requirement, and nearly all ACERA employees have reported their status as having been vaccinated. We will continue to monitor the situation and let you know outcomes, and their possible impact on ACERA.

Given the current uncertainty regarding the new variant, and the impact of the winter months on infection rates, we do not have a specific date for transitioning to "Post-COVID" operations regarding scheduling and customer service. We are monitoring the situation, and consulting with the County regularly on their plans for enhanced operations. We continue to be open to customers by appointment on Tuesdays and Thursday, but have few appointments for in-person services. We stress digital tools, web services, and phone/Zoom appointments to meet customer needs, and the overwhelming majority are still using those methods of interaction. Given the low use of in-person interactions, we have scaled back the number of Benefits team members coming on-site. The remainder of the team members continue to work their prior schedule, with most working from home. We will continue to promote virtual service delivery options as the primary means of meeting our customers' needs.

Currently, even though the County Health Department has altered their rules on mask use, the County has not made any changes to work-site requirements regarding employee mask use and social distancing. These are still required in County work-sites.

Pension Administration System Update

The project is continuing to work through its phases. We have completed the first two deliverables, and we are now working on Deliverable three. We continue to work with the other employers on the new transmittal file layout. Additionally, we are working our On-Base enhancements and integration into the PAS project schedule.

Board Election

We are conducting an election for the vacant Seat 2 (General Member). Three candidates have qualified and were included on the ballot. Ballots were mailed to eligible voters on November 10, and returned ballots will be counted the morning of December 16. We will announce the winner at the Board Meeting.

SACRS Business Vote

At the SACRS Fall Business Meeting, the membership voted unanimously to approve the legislative proposal offered by the Legislative Committee and approved by the SACRS Board.

Other Recruitments:

We have made an offer and it has been accepted for the Investment Operations Officer position. This hire is pending background checks. We are also interviewing for two Retirement Benefit Specialists. These are lead positions within the Benefits Unit.

Key Performance Indicators

Below are the high level performance indicators for ACERA, with the latest scores included:

Scorecard KPI	2020 Performance Goal
PRUDENT INVESTMENT PRACTICES	
Portfolio Performance vs. Policy Benchmark	***Annualized 10-year return will meet or exceed Policy benchmark at the total fund level*** **Through September of 2021: .01% above the benchmark.**
EFFECTIVE PLAN ADMINISTRATION	
Actual Spent vs. Approved Budget	***On budget or 10% below 2021 approved budget*** **As of end of October 2021: 9.5% under budget.**
COMPREHENSIVE ORGANIZATION DEVELOPMENT	
Employee Engagement Survey Results	***80% of responses in top two rating boxes on the question: "Is ACERA a great place to work?"*** **As of the latest survey (October of 2021): 72.7%.**
SUPERIOR CUSTOMER SERVICE	
Service Excellence Survey	***80% of responses in top two rating boxes on the question: "Did ACERA meet or exceed my expectations for my customer service experience?"*** **For 3rd Quarter of 2021: 100%**

NEW BUSINESS

7.E. Discussion and Possible Motion regarding Chief Executive Officer Compensation.

12. CLOSED SESSION:

A. Conference with Designated Representative (Dale Amaral) for Compensation Negotiations with the Chief Executive Officer (Cal. Gov't Code § 54957.6).

IF THERE ARE ANY MATERIALS TO BE DISTRIBUTED FOR AGENDA ITEM 12.A. ABOVE, THEY WILL BE DISTRIBUTED UNDER SEPARATE COVER.