



Alameda County Employees' Retirement Association
BOARD OF RETIREMENT

**OPERATIONS COMMITTEE/BOARD MEETING
NOTICE and AGENDA**

ACERA MISSION:

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

**Wednesday, April 5, 2023
9:30 a.m.**

LOCATION AND TELECONFERENCE	COMMITTEE MEMBERS	
<p>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</p> <p>The public can observe the meeting and offer public comment by using the below Webinar ID and Passcode after clicking on the below link or calling the below call-in number.</p> <p>https://zoom.us/join Call-In Number: 1 699 900 6833 Meeting ID: 879 6337 8479 Password: 699406 For help joining a Zoom meeting, see: https://support.zoom.us/hc/en-us/articles/201362193</p>	KELLIE SIMON, CHAIR	ELECTED GENERAL
	OPHELIA BASGAL, VICE CHAIR	APPOINTED
	ROSS CLIPPINGER	ELECTED SAFETY
	HENRY LEVY	TREASURER
	ELIZABETH ROGERS	ELECTED RETIRED

This is a meeting of the Operations Committee if a quorum of the Operations Committee attends, and it is a meeting of the Board if a quorum of the Board attends. This is a joint meeting of the Operations Committee and the Board if a quorum of each attends.

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 posted online at www.acera.org and also may be inspected at 475 14th Street, 10th Floor, Oakland, CA 94612-1900.

Public comments are limited to four (4) minutes per person in total. The order of the items on the agenda is subject to change without notice.

Note regarding accommodations: If you require a reasonable modification or accommodation for a disability, please contact ACERA between 9:00 a.m. and 5:00 p.m. at least 72 hours prior to the meeting at accommodation@acera.org or at 510-628-3000.

OPERATIONS COMMITTEE/BOARD MEETING

NOTICE and AGENDA, Page 2 of 3 – April 5, 2023

Call to Order: 9:30 a.m.

Roll Call

Public Input (Time Limit: 4 minutes per speaker)

Action Items: Matters for Discussion and Possible Motion by the Committee

1. Review of the Administrative Hearing Policy

-Jeff Rieger

Recommendation

That the Operations Committee recommend to the Board that the Administrative Hearing Policy continues to be necessary and appropriate and that the Board make the revisions to the Administrative Hearing Policy shown in the redline included with this agenda packet.

2. Review of the Error Correction Policy

-Jeff Rieger

Recommendation

That the Operations Committee recommend to the Board that the Error Correction Policy continues to be necessary and appropriate and that the Board make the revisions to the Error Correction Policy shown in the redline included with this agenda packet.

3. Review of Board and Committee Operations Policy for Possible Additional Limitations on Public Comment at Board and Committee Meetings

-Jeff Rieger

Recommendation

That the Operations Committee consider whether to add additional limitations on public comment at Board and Committee meetings. Proposed additional limitations are shown in the redline to the Board and Committee Operations Policy included with this agenda packet.

Information Items: These items are not presented for Committee action but consist of status updates and cyclical reports

1. Operating Expenses as of 02/28/2023

-Erica Haywood

2. Statement of Reserves as of 12/31/2022

-Erica Haywood

OPERATIONS COMMITTEE/BOARD MEETING

NOTICE and AGENDA, Page 3 of 3 – April 5, 2023

3. Board Effects Presentation

-Dana D'Arienzo

Trustee Remarks

Future Discussion Items

May (to be presented at Board Meeting)

- Quarterly Financial Statements as of 03/31/23
- Operating Expenses as of 03/31/23
- Quarterly Cash Forecast Report
- Board Member Conference Expense Report for 1st Qtr. 2023
- Senior Manager Conference and Training Expense Report for 1st Qtr. 2023

June

- Operating Expenses as 04/30/23
- Technology Report
- MMRO Annual Report

Establishment of Next Meeting Date

June 7, 2023, at 9:30 a.m.

Adjournment



To: Operations Committee
From: Jeff Rieger, Chief Counsel
Meeting: April 5, 2023
Subject: **Policy Review**

A handwritten signature in blue ink, appearing to be 'M R'.

At this meeting, the Committee will review proposed revisions to the Administrative Hearing Policy and Error Correction Policy, per the Board's regular cyclical review of those Policies. The Committee will also consider possible revisions to the Board and Committee Operations Policy to provide additional reasonable limitations on public comment. The proposed policy revisions are shown in the redlines attached hereto and discussed below.

Administrative Hearing Policy

The primary recommended change is to clarify that staff and the CEO need not take a position on a member request and may, instead, bring the request to the Board for a decision outside of an adversarial hearing process. This procedure should help streamline decision-making and give staff more flexibility when addressing member requests. Also, the Board may be able to receive confidential advice from the Chief Counsel, which may not be advisable on an appeal from a staff denial under due process principles. This non-adversarial process is already available by law but providing a framework in the Policy will provide guidance and transparency for all parties and staff.

Another recommended change is to clarify the CEO's authority to accept late appeals to the CEO or to the Board. Sometimes it may be in the interests of ACERA and its membership to have a "late" appeal heard, so that the matter can be addressed administratively before a member seeks relief in the courts.

Error Correction Policy

The two primary changes relate to how interest is applied to amounts ACERA owes members/beneficiaries for benefit underpayments and amounts members/beneficiaries owe ACERA for benefit overpayments. First, I recommend the Policy state that members/beneficiaries will be paid interest on underpayments that were due to ACERA errors. This is consistent with law and ACERA's past practice in cases where interest was legally required. Including the proposed language in the Policy provides guidance and transparency to all parties and staff. Second, some of the Policy's existing provisions regarding the application of interest that some members/beneficiaries owe to ACERA are ambiguous. The proposed revisions help clarify how the interest will be calculated without making substantive changes.

Other recommended changes to the process when a member/beneficiary owes ACERA for benefit overpayments include: (a) increased authority for the CEO to compromise recovery (from \$10,000 to \$15,000) or waive recovery (from \$300 to \$500), and (b) decreased maximum repayment time from ten to five years (absent a financial hardship).

Board and Committee Operations Policy

Gov't Code § 54954.3(b)(1) provides: "The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of [the public comment requirement] is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker."

The Board and Committee Operations Policy currently states: "The duration of any public comment shall normally be no longer than four (4) minutes per speaker, but the Chair of the meeting may allow for longer public comment." Also, the meeting Chair has authority to allow or require that all public comments on an agenda item must be made at the time the agenda item is discussed. Some Trustees have raised concerns that, under the current rules, a large group could use public comments to unreasonably delay Board or Committee meetings, which has reportedly occurred at some California public meetings after the increase in remote public participation opportunities resulting from the pandemic.

The following framework for public comment is offered for the Operations Committee's consideration to balance the public's right to make comments at Board and Committee meetings with the Board's and Committees' reasonable control of meetings:

1. Continue to limit public comment to four minutes per individual per meeting and give the Chair authority to allow or require that all public comments on an agenda item must be made at the time the agenda item is discussed.¹
2. State that, at a Board meeting, the Board Chair need not allow public comment on an item that was already considered at a Committee meeting at which public comment was allowed if the Committee has made a recommendation that is before the Board, per Gov't Code § 54954.3(a).
3. Add a limitation that the meeting Chair normally will not allow more than 40 minutes of public comment per agenda item, subject to increase by the Chair. If there appears to be many individuals who wish to comment, the Chair will determine how many there are. If there are more than ten, the Chair may limit the time for each public comment as follows:
 - 11-13 individuals will get 3 minutes each.
 - 14-20 individuals will get 2 minutes each.
 - 21-26 individuals will get 90 seconds each.
 - 27-40 individuals will get 1 minute each.
 - No more public comment after 40 individuals have spoken.²

¹ *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150 (three-minute limit upheld); *Olson v. Hornbrook Cmty. Servs. Dist.* (2019) 33 Cal.App.5th 502 (requirement of public comment when agenda items discussed upheld).

² *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109 (may shorten normal comment time based on circumstances of meeting).

- The order of public comments will be determined first by sign-up sheet in the Board Room and then by order of virtual hands raised on Zoom.
4. State the legal requirement that the meeting Chair must allow twice the allotted time for a non-English speaker who utilizes a translator unless simultaneous translation equipment is available in which case the normal time limits apply.

The Board has discretion regarding the kinds of limitations described above. Thus, the Board may adopt other reasonable new limitations or no new limitations at all.

I will be happy to answer any questions at the Operations Committee meeting regarding any of the proposed revisions to the three policies described above.

Administrative Hearing Policy



Administrative Hearing Policy

I. Purpose

This ~~P~~policy provides a procedure for the Board to review ACERA Staff decisions, except for disability matters. Hearings on disability matters are governed by the Disability Retirement Procedures. The objective of this ~~P~~policy is to ensure a fair and efficient consideration of member ~~, survivor~~ and beneficiary ~~matters requests~~.

II. Definitions

- A. Applicant: A member ~~, survivor~~, or beneficiary of ACERA.
- B. Board: The ACERA Board of Retirement.
- C. Day: Calendar day.
- D. Hearing: The presentation of sworn testimony, other evidence, and legal argument before the Board or Hearing Officer.
- E. Hearing Officer: Person who conducts an administrative hearing on issues related to a matter referred to that person and who provides Findings of Law and Fact to the Board and a Proposed Recommendation. Government Code section 31533 provides who may be a Hearing Officer.
- F. CEO: Chief Executive Officer of ACERA.

III. Matters Regarding Policy and Board Discretion

- ~~G.A.~~ Nothing in this Policy requires staff to take a position on an applicant's request. Staff may elevate an applicant's request to the CEO without denying the request.
- B. Nothing in this Policy requires the CEO to take a position on an applicant's request. If the CEO determines that the applicant's request implicates matters of policy or falls within the Board's discretion to grant or deny, the CEO may bring the matter to the Board for resolution without proceeding through the procedures in Section IV below. In such cases:

1. The CEO will provide the applicant with at least 30-day notice that the matter will be brought to the Board for consideration at a public meeting.
- ~~1-2.~~ The applicant will be permitted to submit written materials for the Board's consideration no later than 15 days before the Board meeting at which the matter will be considered. Ordinarily such materials will be included in the Board's public agenda backup but may be provided in the Board's confidential packet when authorized by law.
3. The matter will ordinarily be placed on the Board's agenda for open session at a regularly scheduled Board meeting. The CEO may place the matter on the Board's closed session agenda if the matters to be discussed are protected from public disclosure pursuant to the Brown Act.
- ~~2-4.~~ The applicant will have the opportunity to address the Board at the meeting when the matter is considered, subject to the Board Chair's control of the meeting.
5. The Board may hold a closed session to consult with Chief Counsel or outside counsel when authorized and properly agendized under the Brown Act.
6. The Board may issue a final decision or may require further proceedings, which may (but need not) include the procedures outlined in Section IV below.

III-IV. Guidelines and Procedures for Appeals of Denied Requests

A. Filing a Timely Appeal from a Denied Request

1. An applicant may appeal ACERA staff's decision in writing to the CEO within 30 calendar days of the date of staff's notification to the applicant of the decision. The CEO may consider a late appeal if the CEO determines there was good cause for the late appeal or consideration of the late appeal is in the interests of ACERA and its membership. The CEO will respond in writing with a decision either supporting the position taken by ACERA staff or modifying or overturning that decision.
2. The Board delegates to the CEO full authority to make all initial determinations regarding claims by applicants and participating employers. The CEO will consult with appropriate advisers as the CEO deems necessary.

3. If the applicant does not agree with the decision of the CEO, the applicant may appeal the decision in writing to the Board within 30 calendar days of the date on the CEO's notification to the applicant of the decision.
 4. Appeals to the Board from administrative decisions will ordinarily be placed on the Board's agenda for open session at a regularly scheduled Board meeting. The CEO may place the matter on the Board's closed session agenda if the matters to be discussed are protected from public disclosure pursuant to the Brown Act.
 5. Failure to file a timely appeal will constitute a waiver of the right to have the appeal heard, although the CEO may allow an untimely appeal to proceed to the Board, if the CEO determines there was good cause for the late appeal or consideration of the late appeal is in the interests of ACERA and its membership in the CEO's sole discretion.
- B. Date and Notice of Hearing:
1. The Board may hear the matter directly or refer it to a Hearing Officer for a recommendation to the Board for final decision. (Govt. C. 31533).
 2. If the Board hears the matter directly, the hearing shall be set by the office of the CEO at the earliest mutually agreeable date and the office of the CEO shall deliver by US mail and email (if available), a notice of hearing to the applicant and all other parties at least 30 days before the hearing, unless the parties agree to a shorter notice period. ACERA shall provide a copy of this ~~hearing P~~policy and any applicable regulations regarding the administrative hearings.
 3. When the Board hears a matter directly, the Board may alter or truncate the procedures described in this Policy when it determines that doing so is in the interests of justice and efficiency.
- C. Appointment of Hearing Officer
1. If the Board refers the matter to a Hearing Officer, the process will be as follows:
 - a. The Board will refer the matter to the Legal Department for assignment of a Hearing Officer from a rotating list of approved Hearing Officers.

- b. The Legal Department will provide the first name on the rotating list to the parties.
 - c. Either party may challenge a Hearing Officer for cause by filing a written objection with the Legal Department with 10 calendar days of the date of the notice of the list. A challenge for cause is an allegation that the Hearing Officer cannot be fair and impartial. The Legal Department shall review the challenge for cause and, if sustained, select another name from the list of Hearing Officers and advise the parties accordingly. If circumstances giving rise to a challenge for cause arise or are discovered after appointment of the Hearing Officer, and the Hearing Officer does not recuse him or herself, the party challenging the Hearing Officer may make a record of the circumstances and present them to the Board ~~as part of a hearing before the Board when the matter is before the Board~~ pursuant to section F(1)(b)(4) below.
2. The Hearing Officer will set the date of the hearing in conjunction with the schedules of the parties.

D. Conduct of Hearing

1. The Board Chair or Hearing Officer shall preside over the hearing.
2. The Chair or Hearing Officer shall make all rulings necessary for fair and efficient proceedings, including the admissibility of evidence, conduct of witnesses and parties and scheduling.
3. Parties (including ACERA Staff) and their counsel are prohibited from having communications with Board members or Hearing Officers regarding matters related to the hearing without the presence or knowledge of the other party.

E. Hearing Process

1. All parties are entitled to representation by an attorney licensed to practice in the State of California at any hearing at the sole expense of that party. Once ACERA has notice that an attorney is representing an applicant, all notices and other papers shall be served on the attorney.

2. The party seeking relief from ACERA has the burden of proof and shall present their case first, followed by ACERA staff. In all cases, the presentation may include:
 - a. Opening statement;
 - b. Testimony of witnesses and presentation of documentary evidence;
 - c. Cross examination of witnesses;
 - d. Rebuttal evidence;
 - e. Closing statements
3. Both ACERA staff and the applicant are entitled to submit written evidence or argument to the Board or Hearing Officer. Each side will provide copies of the materials proposed to be offered at the hearing to the other side at least 10 days before the hearing is held.
4. Evidence
 - a. Witnesses must testify under oath or affirmation administered by the Hearing Officer or the Board Chair.
 - b. Each party is responsible for obtaining those subpoenas it deems necessary for the presentation of its evidence at hearing. All subpoenas are to be issued in accordance with Government Code section 31535.
 - c. The hearing need not be conducted accordingly to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.
 - d. The Hearing Officer or Board Chair has discretion to admit relevant and reliable evidence to or exclude irrelevant or repetitious evidence.

- e. The record shall be closed to new evidence at the conclusion of the final day if hearing unless each party stipulates to leave the record open.

F. Board Consideration and Action

1. Hearing Officer Findings of Fact, Conclusion of Law and Recommended Decision

- a. Following a hearing by a Hearing Officer, the Hearing Officer shall transmit to the Board written proposed findings of fact, conclusions of law, and recommendations.
- b. Upon receiving proposed findings of fact and recommendations, the Board may do one of the following:
 - 1) Approve and adopt the proposed findings and recommendations; or
 - 2) Require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon receipt thereof the Board shall take such action in its opinion is indicated by such evidence; or
 - 3) Refer the matter back to the hearing office with instructions for further proceedings; or
 - 4) Set the matter for hearing before the Board. At such hearing, the Board shall hear and decide the matter as if it had not been referred to the Hearing Officer.

- c. Staff will notify the applicant in writing of the Board's determination within 10 days of the hearing.

2. Board Hearing

- a. Following the hearing, the Board will deliberate and vote on the matter and instruct staff to notify the applicant in writing of the Board's determination within 10 days. The determination may, but need not, include a statement of decision.

- b. A Board member who did not attend all portions of a Board hearing may not participate in the Board's deliberations and vote, unless all the following conditions are met:
- 1) A quorum of members who attended the full hearing is not available;
 - 2) The member has read the transcript (or listened to the audio recording) of that portion of the hearing during which he or she was not in attendance; and
 - 3) The member has stated on the record that he or she has undertaken and completed such review.

G. Review of the Board's Decision: The Board has exercised its discretion to establish the procedures outlined in this Policy. The procedures outlined in this Policy are not required by law. Board decisions made pursuant to this Policy are reviewable by ordinary mandamus under Code of Civil Procedure section 1085.

~~IV.V.~~ Policy Review

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

~~V.VI.~~ Policy History

The Board adopted this policy on July 19, 2018¹.

The Board reviewed and affirmed this policy, with revisions on ~~September 17, 2020~~ April 20, 2023.

¹ The Board adopted the Administrative Hearing Policy on July 19, 2018. The Board adopted the Administrative Appeals Procedures on September 17, 2015. The Board reviewed and affirmed the Administrative Appeals, with revisions, May 19, 2016 and ~~September 17, 2020.~~

Error Correction Policy



Error Correction Policy

I. Purpose

This Policy establishes standards and procedures for recovery or resolution of overpayments or underpayments of benefits and underpayments of member contributions. This policy does not apply to overpayments of member contributions, which are resolved according to IRS requirements.¹

II. Objectives

- A. To meet the Board's fiduciary obligation to conserve fund assets and protect the integrity of the fund for the benefit of the members and beneficiaries.
- B. To make reasonable efforts to restore the Plan to the position it would have been in had no error occurred.
- C. To maintain the tax-qualified status of the pension plan and avoid making any gift of public funds.

III. Assumptions

- A. The procedures and outcomes are intended to comply with applicable requirements of the Internal Revenue Code (IRC) and Internal Revenue Service (IRS) regulations, including the IRS Employee Plans Compliance Resolution System (EPCRS). If there is a conflict between applicable law and this policy, the law shall govern.
- B. This policy applies when an error affects an individual member's or beneficiary's benefits or contributions. In the event of a system-wide error that affects multiple members'/beneficiaries' benefits or contributions, the Board may implement a system-wide correction process that it determines appropriate under the circumstances.

¹ In general, employers refund overpaid member contributions to active members and ACERA refunds overpaid member contributions to inactive or retired members.

IV. Guidelines & Procedures

A. Investigation and Reporting.

1. Investigation: When an error is identified, Staff shall promptly notify the CEO (or designee), who shall ensure that an appropriate and timely investigation is undertaken into the facts and circumstances surrounding the error and that all necessary corrective actions are taken.
2. Reporting: The CEO shall make periodic reports to the Board on errors and corrections results at least annually.
3. Overpayment based upon fraud:
 - a. Staff shall be vigilant for any indications of fraud as a cause for overpayment, whether by the payee or a third party.
 - b. In the event that fraud is suspected, Staff shall immediately notify the Legal Department and the CEO who will investigate whether evidence of fraud exists.
 - c. Further investigation may include retention of a private investigator or other outside resources as may be deemed appropriate under the circumstances.
 - d. Based on the evidence uncovered, Staff and the Legal Department may notify law enforcement and pursue criminal action.
 - e. If justified and reasonable, Staff and the Legal Department may undertake civil action to recover fraudulently obtained ACERA funds.

B. Overpaid Benefits and Underpaid Contributions: Correction and Recovery

1. As soon as possible after an error is discovered, ACERA staff shall determine:
 - a. The appropriate date of correction;
 - b. The amount of the correct benefit or contribution amount starting from the date of correction;

- c. The amount of the error starting from the beginning of the erroneous payment to the date of correction;
 - d. The “appropriate interest” related to the error as defined below.
 2. ACERA shall promptly notify the member/beneficiary in writing of the following:
 - a. The amount and starting date of any prospective adjustment to benefits or contributions reflecting the corrected amount. The starting date must be no less than 30 days after ACERA sends the notice to the member/beneficiary, unless ACERA’s Chief Counsel determines that there is good cause to make the correction sooner.
 - b. The circumstances of the error and the means used to calculate the corrected amount.
 - c. The amount of any overpaid benefits or underpaid contributions plus the amount of appropriate interest.
 - d. Repayment options, which may include a lump sum payment, installment payments or an offset against future benefits; and
 - e. The right of the member/beneficiary to appeal the ACERA staff determination. ACERA will make the necessary adjustments on a going-forward basis regardless of whether an appeal is filed. If the staff determination is overturned, the ACERA Board may direct staff to refund any amounts withheld during the appeal process.
 3. Appropriate Interest
 - ~~a. Interest on the outstanding amount due is compounded twice annually during the period where the benefit was overpaid and during any repayment period.~~
 - b.a. If the evidence shows that the benefit overpayment or contribution underpayment resulted from fraud or dishonest conduct by the member/beneficiary or because the member/beneficiary provided, or caused to be provided, inaccurate information to ACERA or the member’s employer, then “appropriate interest” will be as follows:

- 1) ACERA's ~~smoothed, semi-annual earned interest rate returns~~ on its investments from the time of the error until the last period of smoothed semi-annual interest returns before discovery of the error (investment losses will not result in any reduction to the principal amount the member owes ACERA).
- 2) ~~The ACERA's~~ assumed annual effective rate of return, compounded monthly (e.g., monthly interest of 0.56541% when the assumed rate of return is 7% annually) -from ~~the time of discovery~~the last period of smoothed semi-annual interest returns (per No. 1 immediately above) until such amounts are fully repaid.

e.b. If the benefit overpayment or contribution underpayment was solely the result of an error by ACERA or the member's employer, then "appropriate interest" will be as follows:

- 1) No interest shall be charged from the time of the error until ~~discovery~~ ACERA notifies the member of ~~of t~~ the error. Any liability created by this action shall be ~~assumed as part of ACERA's~~ unfunded liability.
 - 2) ACERA's assumed annual effective rate of return, compounded monthly (e.g., monthly interest of 0.56541% when the assumed rate of return is 7% annually) from the time the member is notified of the error until such amounts are fully repaid. ~~The assumed rate of return from the time of discovery until such amounts are fully repaid.~~
4. In structuring a repayment methodology, ACERA staff shall take into consideration the financial circumstances of the member/beneficiary affecting their ability to make payments. The repayment schedule will not exceed ~~540~~ years except in cases of extreme hardship as defined below.
 5. In the event of the death of the member/beneficiary before full repayment has been made, ACERA shall use all reasonable efforts to recover the unpaid amount from the member/beneficiary's estate or trust, survivors, heirs, and/or beneficiaries.

6. If no agreement can be reached with the member/beneficiary for repayment, or if the member/beneficiary fails to respond to communications from ACERA staff, ACERA ~~staff~~ may take ~~unilateral~~ action to recover of the unpaid amount, including through reductions to future benefit payments, subject to Board approval review by the Board if the member appeals to the Board.

C. Compromise & Settlement.

1. In some circumstances, ACERA may agree to receive less than the full amount in repayment. The recovery options may include:
 - a. Using a discounted interest rate;
 - b. Waiving interest altogether; or
 - c. Accepting less than full repayment of the principal.
2. Factors to be considered in compromising any recovery shall include, but not limited to:
 - a. The likelihood of collection;
 - b. The cost of collection;
 - c. The amount of possible recovery;
 - d. The relative fault of the member/beneficiary, ACERA and employer; and
 - e. Extreme hardship to the member/beneficiary or to his/her estate or heirs.
3. For purposes of this policy, “extreme hardship” will be determined as follows:
 - a. The member bears the burden of establishing any claimed “extreme hardship.”
 - b. “Extreme hardship” is not a bright line test, and a finding of “extreme hardship” depends on the facts and circumstances presented by the member.

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- c. ACERA will consider the following factors in determining whether the member has established an “extreme hardship” justifying compromise of the amount owed by the member:
- 1) Net worth of member and spouse.
 - 2) Amounts and sources of all income to the member and spouse. In general, ACERA will consider that an “extreme hardship” is established if the member’s gross income is no more than 400% of the current federal poverty level based on the member’s household composition of single, married or family.
 - 3) Monthly expenses.
 - 4) Existence and value of real estate and personal assets.
 - 5) Divorce or legal separation.
 - 6) Current or pending catastrophic financial events.
 - 7) Other factors presented by the member.
4. If the member’s gross income is no more than 400% of the federal poverty level as defined above, ACERA will not collect more than 15% of the member’s gross income.
5. In consultation with the Chief Counsel the CEO is authorized to compromise recovery of error amounts of \$~~150~~,000.00 or less, excluding interest. The CEO shall apply the standards for compromise set forth in this Section. The CEO is also authorized to waive recovery of claims of \$~~53~~00.00 or less. All other compromises must be approved by the Board.
6. ACERA shall maintain a record of all error corrections, payments, collection efforts and compromises and releases related to those errors.
- D. Underpayment of Benefits**
1. When ACERA has underpaid benefits to the member, the member shall be entitled to a prospective adjustment to his or her retirement benefits necessary to correct

the error, as well as a lump sum payment for all past amounts owed as a result of the error.

~~2.~~ If the underpayment was due to an ACERA error, as determined by the CEO in consultation with the Chief Counsel, ACERA will pay interest at ACERA's assumed annual effective rate of return, compounded monthly (e.g., monthly interest of 0.56541% when the assumed rate of return is 7% annually) from the time of underpayment to the time the member is made whole for the underpayment.

~~3.~~ If the member who was underpaid dies before payment of the lump sum amount due, the payment will be made in accordance with ACERA's process for paying residual amounts following the death of the member.

E. Underpayment of Contributions:

For underpaid member contributions (which includes completely missed contributions), ACERA will follow the procedures outlined in the Membership Policy for members who are currently employed with a participating employer, and will follow the procedure outlined in Sections IV(B) and (C) above for members who are no longer employed by a participating employer.

F. Appeals/Due Process.

The member/beneficiary may appeal any staff decision regarding corrective actions consistent with the Board Administrative Appeals Policy.

V. Policy Review

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

VI. Policy History

A. The Board adopted this policy on September 17, 2015.

- B. The Board reviewed and affirmed this policy, with revisions on June 21, 2018²
- C. The Board reviewed and affirmed this policy, with revisions on ~~September 17, 2020~~April 20, 2023.

² *The Board adopted the Recovery of Overpayment of Member Benefits & Underpayment of Member Contributions Policy on September 17, 2015. The Board reviewed and affirmed, with revisions, May 19, 2016, ~~and~~ June 21, 2018 and September 17, 2020.*

Board and Committee Operations Policy



Board and Committee Operations Policy

I. Purpose

The ACERA Board and Committee Operations Policy (“Policy”) provides ACERA Trustees (“Members”) and Staff with guidelines for ensuring that Board and Committee meetings will be conducted as efficiently and effectively as possible.

II. Policy Guidelines

A. Governing Law and Rules Of Order

1. The noticing and agendas of all Board and Committee meetings shall conform to the requirements of the Ralph M. Brown Act, Government Code Section 54950, et seq. (the “Brown Act”).
2. Board and Committee meetings shall be guided by the principles embodied in the most current edition of Robert’s Rules of Order (Robert’s Rules). It will be assumed that the Chair of a meeting has acted with unanimous consent, with all procedural objections waived, unless a Member raises a procedural objection before the Board or Committee takes action on the matter for which the procedural objection could have been raised. When a Member timely raises a procedural objection, ACERA’s Chief Counsel will resolve that objection according to Robert’s Rules.
3. In the event of a conflict between the Brown Act and Robert’s Rules, the Brown Act shall prevail.

B. Agendas – Posting

1. A written agenda conforming to the Brown Act shall be prepared for all regular Board and Committee meetings and shall normally be distributed to all Members, posted at ACERA’s offices and on ACERA’s website at least one week before the meeting.
2. When distribution and posting cannot reasonably be accomplished at least one week before the meeting, it will occur at least 72 hours before the meeting, per the Brown Act.

3. Agendas for special meetings shall be posted at least 24 hours before the meeting and special notices shall be provided as required by Section 54956 of the Brown Act.
4. The general rule is that substantive matters within the Board or Committee's jurisdiction that are not on the posted agenda may not be discussed at a meeting. Some limited exceptions may apply from time to time and the Chief Counsel will advise the Board as to the applicability of such limited exceptions.
5. Outside of a properly noticed meeting, a majority of Members of the Board or a Committee shall not use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the Board or Committee.

C. Board Meetings Agenda Content

The Board Meeting Agenda will generally include the following topics as necessary:

1. Call to Order
2. Roll Call
3. Public Comment
4. Consent Calendar
 - a. Report on Service Retirements
 - b. List of Deceased Members
 - c. Approve Requests for up to 130 Bi-Weekly Payments to Re-Deposit Contributions and Gain Credit
 - d. Approve Uncontested Staff Recommendations on Disability Retirements and Death Benefits
 - e. Approve Uncontested Hearing Officer Recommendations for Disability Retirements and Death Benefits
 - f. Approve Minutes of Board and Committee Meetings

- g. Miscellaneous
- 5. Contested Disability Retirements and Death Benefits
- 6. Committee Reports, Recommendations and Motions
- 7. New Business
- 8. Conference Reports
- 9. Announcements
- 10. Board Input
- 11. Establishment of Next Meeting
- 12. Closed Session
- 13. Report on Action Taken in Closed Session
- 14. Adjournment

The Board Chair may alter the agenda and order of business to the extent authorized by the Brown Act. If a Member objects to an alteration of the order of business, a two-thirds vote of the voting Members is required for the Board Chair to alter the order of business.

D. Committee Meetings Agenda Content

Committee Meeting will generally include the following topics:

- 1. Call to Order
- 2. Roll Call
- 3. Public Comment
- 4. Action Items
- 5. Information Items. These are items for which Staff does not recommend any particular action, but the Committee is not precluded from making a recommendation to the Board regarding the subject matter that appears on the agenda, if that recommendation otherwise complies with the Brown Act.

6. Trustee Remarks
7. Future Discussion Items
8. Establishment of Next Meeting
9. Adjournment

The Committee Chair may alter the agenda and order of business for Committee meetings to the extent authorized by the Brown Act. If a Member objects to an alteration of the order of business, a two-thirds vote of the voting Members is required for the Board Chair to alter the order of business.

E. Board And Committee Officers

At the first regular meeting in January, the Board shall elect one of its Members Chair, one of its Members Vice Chair, and one of its Members Second Vice Chair. The term shall be for either one year, or until their successors are duly elected and qualified.

1. The Chief Executive Officer (CEO) shall serve as Secretary to the Board.
2. The Chair of the Board shall:
 - a. Appoint Members to all ACERA standing and ad hoc Board Committees and in making such appointments shall whenever possible, appoint both elected and appointed Members to each Committee. The Chair may consider the need to:
 - 1) Maintain continuity in Committee membership,
 - 2) Rotate the composition of Committees to provide Members with diversified experience,
 - 3) Reflect a Member's area of interest and/or skill set, and
 - 4) Minimize conflicts of interest.
 - b. Remove and replace Committee Members so appointed;
 - c. Appoint a Chair and Vice Chair for each Committee of the Board;
 - d. Coordinate the preparation of the Board agenda with the CEO;

- e. Chair meetings of the Board;
 - f. Communicate with external parties in cooperation with the CEO;
 - g. Coordinate the process for annually evaluating the performance of the CEO as prescribed in applicable Board policies;
 - h. Coordinate the process in the event that the Board evaluates its own performance;
 - i. Serve as a member of all Committees if any Committee member is absent.
3. If the Board Chair is unavailable or unable to carry out his or her duties, the First Vice Chair shall assume duties of Board Chair. If the First Vice Chair is unavailable or unable to carry out his/her duties, the Second Vice Chair shall assume the duties of the First Vice Chair.
 4. In the event that an officer of the Board becomes ineligible or unable to complete his or her term, the following action shall be taken:
 - a. If said officer is the Chair, then the Vice Chair shall assume the Chair's position for the balance of the Chair's term, and a new Vice Chair shall be elected at the next regularly scheduled meeting;
 - b. If said officer is the Vice Chair, then the Board shall elect a new Vice Chair at the next regularly scheduled meeting; and
 - c. If said officer is the Second Vice Chair, then the Board shall elect a new Second Vice Chair at the next regularly scheduled meeting.
 5. Officers may be removed from the Chair, Vice Chair, and Second Vice Chair positions by a two-thirds ($\frac{2}{3}$) vote of the entire Board (i.e., six members).
- F. Committee Procedures
1. Standing Committees exist to assist the Board in fulfilling its charter and to apply more concentrated attention to specialized topics that impact the Board's effective management of ACERA. All actions taken by standing and ad hoc Committees are deemed to be advisory and must be approved by the Board before becoming

effective, unless the Board determines that expeditious action is required, such that final action should be taken at a Committee meeting.

2. The CEO shall assign a staff member to each standing and ad hoc Committee to serve as Staff Liaison and primary contact for the Committee Chair and Committee Members with respect to the work of the Committee.
3. At their first meetings each year, the Retiree, Investment, and Operations Committees shall establish a schedule of meetings for the rest of the year. The other Committees will establish meetings as needed.
4. The Committee Chair may cancel or reschedule a meeting if it is apparent that there will not be a quorum or there are insufficient issues to warrant a meeting. Attempts will be made to provide all Committee Members with at least one week's notice of the cancelled or rescheduled meeting.
5. Each Committee (including ad hoc Committees upon creation) shall, in consultation with its Staff Liaison, adopt a charter outlining its purpose, responsibilities and meeting frequency.
6. Each year, staff liaisons shall prepare a draft work plan for the following year containing proposed monthly agenda items for their standing Committees and incorporating ACERA's ongoing cyclical workload requirements and any budget and business plan instructions received. A proposed work plan shall be submitted to each Committee at the first or second scheduled meeting of the New Year for review and modifications. Committee work plans can be modified throughout the year as needed.
7. Each Committee Chair shall be responsible for:
 - a. The efficient operation of the Committee,
 - b. Facilitation of the work outlined in the Committee Charter and prioritized in the Committee work plan,
 - c. Retaining focus primarily on policy and oversight while allowing management to carry out the day-to-day implementation of Board and Committee policy, and

- d. Coordinate Committee activities with the Staff Liaison.
8. In the event a Committee Chair is absent or the position is vacant, the Committee Vice Chair shall preside over meetings of the designated Committee. In the event the Committee Chair and Vice Chair are both absent the Board Chair, or a Board Vice Chair will preside over the designated Committee. If the Committee Chair and/or Vice Chair positions are vacant, the Board Chair shall appoint a new permanent Committee Chair and/or Vice Chair.
- G. Quorum and Voting
1. The Board is composed of nine (9) Members, plus an Alternate Safety Member, and an Alternate Retired Member. A majority of the Members of the Board constitutes a quorum and a quorum of the Board is required to take action.
 2. Committees shall be composed of no more than five (5) Members, except the Investment Committee and the CEO Succession Committee which shall be composed of the full Board. A majority of the Members of a Committee constitutes a quorum of that Committee and a quorum is required for the Committee to take action.
 3. Any motion passed or business transacted at a Board or Committee meeting must be approved by a majority of the Members present and voting, except as otherwise provided by law. A Member who abstains is not considered present and voting, but remains present for purposes of a quorum.
 4. For the purposes of determining the voting rights of the Alternate Seventh Member and the Alternate Eighth Member, a Member can be “absent” for a particular agenda item. A Member who leaves the boardroom during an in-person meeting or who disconnects from a video-conference meeting is “absent” for that agenda item. Alternatively, a Member can irrevocably declare themselves “absent” with respect to a particular agenda item for the purpose of allowing the appropriate Alternate to vote in their place.
 5. The Alternate Seventh Safety Member shall be counted towards a quorum and may vote only in the event the following Members are absent:
 - a. Second Member, or

- b. Third Member; or
 - c. Seventh Member; or
 - d. Both the Eighth and the Alternate Eighth Members.
6. The Alternate Eighth Retired Member shall be counted towards a quorum and may vote only in the event the following members are absent:
- a. Eighth Member; or
 - b. Both the Second and Third Members; or
 - c. Both the Second and Seventh Members; or
 - d. Both the Third and Seventh Members.¹

H. Public Comment

- 1. Every agenda for a regular Board or Committee meeting shall provide members of the public an opportunity to address the Board or Committee at each meeting on any item under the subject matter jurisdiction of the body. Public Comment appears on the agenda immediately after Roll Call, but it is within the meeting Chair's discretion to allow or require public comment on particular agenda items when those items are discussed by the Board or Committee.
- 2. With respect to any agenda item, the public shall be given the opportunity to comment before or during the Board or Committee's consideration of the item, including closed session items prior to adjournment into closed session.
- 3. Where a member of the public raises an issue not on the agenda, no debate or action may be taken at that meeting. However, Members of the Board or Committee or staff present may
 - a. provide a brief response or ask a question,

¹ If two of the Second, Third and Seventh Members are absent from a meeting, they are both still considered absent even if the Alternate Seventh Member is present and voting. Thus, if two of those members are absent, the Alternate Seventh Member and the Alternate Eighth Member may vote.

- b. provide a reference to staff or other resources for factual information, or
- c. direct staff to place the issue on a future agenda.

~~4.~~ The duration of any public comment shall normally be no longer than four ~~(4)~~ minutes per speaker per meeting, but the Chair of the meeting may allow for longer public comment.

~~5.~~ At a Board meeting the Board Chair need not allow public comment on an item that was already considered at a Committee meeting at which public comment was allowed if the Committee has made a recommendation that is before the Board.

~~6.~~ The meeting Chair normally will not allow more than 40 minutes of public comment on each agenda item. The meeting Chair may increase that time limitation. If there is an item for which there appears to be many individuals who wish to comment, the Chair will determine how many individuals want to make a public comment on the item before public comment is taken. If there will be more than 10 individuals who want to make a public comment, the Chair may limit the time for each public comment as follows:

- 11-13 individuals will get 3 minutes each.
- 14-20 individuals will get 2 minutes each.
- 21-26 individuals will get 90 seconds each.
- 27-40 individuals will get 1 minute each.
- No more public comment after 40 individuals have spoken.
- The order of public comments will be determined first by sign-up sheet in the Board Room and then by order of virtual hands raised on Zoom or similar remote attendance platform.

~~7.~~ In all cases, the meeting Chair must allow twice the allotted time for a non-English speaker who utilizes a translator, unless simultaneous translation equipment is available in which case the normal time limits apply.

I. Attendance And Participation At Board And Committee Meetings

1. Members agree to make every reasonable effort to attend all meetings of the Board and of Committees on which they serve. All Members are free, but not obligated, to attend any Committee meeting. All Members may participate in Committee deliberations, but only Committee Members may vote on matters before the Committee, unless a quorum of the Board is present, and then Board voting rules apply.
2. If a quorum of the Board attends and participates in a Committee meeting as more than observers, the meeting will be a full Board meeting. The following Committee rules will nevertheless continue to operate for those meetings:
 - a. The Committee Chair will continue to run the meeting.
 - b. The actions of the Committee will still be subject to approval by the full Board, unless the Board determines more expeditious action is necessary.
3. Alternate Members
 - a. An Alternate Member shall have the same responsibilities and access to a closed session of the Board or a closed session of a Committee, as a Board Member whether or not the Second, Third, Seventh or Eighth Board Members are present.
 - b. Alternate Members may replace absent Committee Members, participate in Committee meetings and vote on motions, in accordance with Board rules on replacing absent members.
 - c. Alternate Members may not hold office on the Board or Committees. An Alternate Member, who replaces an absent Board Member who is also an officer, does not become an officer as a result.
4. Compensation and Reimbursement
 - a. Eligibility for compensation for the Fourth, Fifth, Sixth, Eighth (including Alternate), and Ninth Members (Cal. Gov. Code §§31521, 31520.5) for Committee attendance does not require membership on the Committee.
 - b. Reimbursement to employers of Elected Members. (See Voluntary Elected Member Employer Reimbursement Policy.)

J. Minutes

1. The Secretary is responsible for preparation of the Board minutes and the Staff Liaison is responsible for Committee minutes.
2. The person responsible for minutes shall record the following in the minutes:
 - a. The time and place of each meeting of the Board or Committee.
 - b. The names of Members present.
 - c. All official acts taken listing the motion and the first and second (a first and second may, but need not, be listed for actions taken in closed session).
 - d. The individual votes of every Members present for all actions taken.
 - e. Describe with sufficient detail any actions taken by the board or Committee including pertinent discussions.
 - f. Brief references to non-action or information items; and
 - g. Include direct instructions to Staff by the Chair.
3. Approval of Minutes
 - a. If a Committee meets in at least ten days before a Board meeting, the Staff Liaison and Committee Chair will finalize the Committee minutes in sufficient time to be distributed to the Board no later than three days before the next scheduled Board meeting.
 - b. If a Committee meets less than ten days before the next Board meeting, the Committee Chair will provide a summary of the Committee meeting to the Board at the Board meeting that week. The minutes will be presented to the Board for review and adoption at the next scheduled Board meeting.
 - c. Staff Liaison will present draft minutes to the Committee Chair at least three days before they must be presented to the Board, according to the deadlines stated above. If the Committee Chair does not respond, the Staff Liaison will distribute the draft minutes to the Board, according to the deadlines above.

K. Pattern And Dates Of Board Meetings

1. Regular meetings of the Board of Retirement shall be held on the third (3rd) Thursday of each month at 2:00 p.m. at ACERA's office in Oakland, California. The Board Chair may approve any revisions to the date, time, or venue.
2. Special meetings of the Board of Retirement may be called at any time by the Chair or a majority of all the Members of the Board subject to the provisions of Government Code Section 54956. Notice of not less than twenty-four (24) hours shall be given to each Board Member, media outlets requesting notice, and provided on the ACERA website.
3. In the fall of each year, ACERA may hold its Board of Retirement Offsite Retreat which may include an evaluation of the budget and Business Plan for the current and following years, discussion with senior management staff and such educational and informational presentations as deemed appropriate.

L. Standing Committees

The Standing Committees of the Board are as follows:

1. Retirees
2. Investment
3. Governance
4. Operations
5. Actuarial
6. Audit
7. CEO Evaluation

M. Ad Hoc Committees

1. The Board may approve the establishment of temporary ad hoc Committees to gather information and make recommendations to the Board or a Committee on specific subject matters. The Board Chair shall appoint the Chair and Members of ad hoc Committees. Ad hoc Committees shall have no more than four (4) Members and, if they are otherwise compliant with the Brown Act, shall not be

required to comply with the agenda requirements of this Policy. Board Members not appointed to an ad hoc Committee are not permitted to attend meetings of the ad hoc Committee or discuss any of the issues addressed by the ad hoc committee with any members of the ad hoc committee.

2. At the beginning of each calendar year, the Board shall assess the need for all existing ad hoc Committees and formally dissolve any ad hoc Committees deemed unnecessary.

III. Policy Review

The Governance Committee shall review the Board and Committee Operations policy at least every three (3) years to ensure that it remains relevant and appropriate.

IV. Policy History

A. The Board adopted this policy on February 15, 2018.

~~B.~~ The Board reviewed and revised this Policy on April 21, 2022.²

~~B.C.~~ The Board revised Section II(H) on April 20, 2023.

² The Board Operations Policy was adopted on November 18, 1999; and renewed, with revisions, on August 15, 2001; March 8, 2005; November 9, 2006; March 19, 2009; August 18, 2011; April 17, 2014; and November 17, 2016. The Committee Operations Policy was adopted on August 15, 2002; and renewed, with revisions, on November 9, 2006; March 19, 2009; August 18, 2011; and April 17, 2014; and, without revisions, on July 21, 2016. The ACERA Board Officers Policy was renewed, with revisions, on December 6, 2006. The Board Operations Policy, the Committee Operations Policy, and the ACERA Board Officers policy were combined into the Board and Committee Operations Policy, which was adopted by the Board of Retirement on February 15, 2018. The Board reviewed and affirmed this Policy, with revisions, on June 21, 2018. The Board of Retirement renewed the Board and Committee Operations Policy, with revisions, on August 15, 2019.



MEMORANDUM TO THE OPERATIONS COMMITTEE

DATE: April 5, 2023

TO: Members of the Operations Committee

FROM: Erica Haywood, Fiscal Services Officer *EH*

SUBJECT: Operating Expenses and Budget Summary for the period ended February 28, 2023

ACERA's operating expenses are \$68K under budget for the period ended February 28, 2023. Budget overages and surpluses worth noting are as follows:

Budget Overages

1. *Staffing*: Staffing is \$10K over budget. This amount comprised surpluses in fringe benefits of (\$73K), and staff vacancies of (\$84K), offset by overages in temporary staffing of \$42K and 5% staff vacancy adjustment of \$125K.
2. *Professional Fees*: Professional Fees is \$9K over budget. This amount comprised overage in legal fees of \$3K and consultant fees of \$6K.

Budget Surpluses

3. *Staff Development*: Staff Development is \$20K under budget due to savings from unattended staff trainings and conferences.
4. *Office Expense*: Office Expense is \$15K under budget. This amount comprised surpluses in bank charges of (\$8K), building expenses of (\$7K).
5. *Member Services*: Member Services are \$20K under budget. This amount comprised surpluses in disability legal arbitration and transcripts of (\$11K), disability medical expense of (\$4K), and member training, printing and postage of (\$5K).
6. *Systems*: Systems are \$31K under budget in business continuity expenses.
7. *Board of Retirement*: Board of Retirement is \$1K under budget in board compensation.

Staffing Detail

Vacant positions as of February 28, 2023:

Department	Position	Qty	Comments
Benefits	Retirement Benefits Specialist	1	Vacant - currently budgeted for the year
Benefits	Sr. Retirement Technician	2	Vacant - currently budgeted for the year
Benefits	Retirement Support Specialist	1	Vacant - currently budgeted for the year
Fiscal Services	Retirement Accountant II	1	Vacant - currently budgeted for the year
Investments	Investment Analyst	1	Vacant - currently budgeted for the year
PRISM	Retirement System Program Analyst	1	Vacant – currently budgeted for the year
Total Positions		7	

Pension Administration System Project - as of February 28, 2023					
	Year-To-Date			2023 Budget	2019-22 Actual
	Actual	Budget	Variance		
Consultant Fees					
Levi, Ray and Shoup	203,972	250,000	(46,028)	1,500,000	2,533,989
Segal and other consultant fees	92,847	80,000	12,847	480,000	1,632,042
Other expenses	-	-	-	-	1,500
Leap Technologies	-	-	-	-	98,970
Total	296,819	330,000	(33,181)	1,980,000	4,266,501
Staffing	106,370	116,000	(9,630)	696,000	2,158,220
TOTAL	403,189	446,000	(42,811)	2,676,000	6,424,721

Attachments:

- Total Operating Expenses Summary
- Professional Fees – Year-to-Date – Actual vs. Budget
- Actual Operating Expenses comparison with last year



**ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
TOTAL OPERATING EXPENSES SUMMARY**

YEAR TO DATE - ACTUAL VS. BUDGET						
<i>February 28, 2023</i>						
	<u>Actual</u>	<u>Budget</u>	<u>YTD</u>	<u>2023</u>	<u>% Actual to</u>	
	<u>Year-To-Date</u>	<u>Year-To-Date</u>	<u>Variance</u>	<u>Annual</u>	<u>Annual Budget</u>	
			<u>(Under)/Over</u>	<u>Budget</u>		
Staffing	\$ 2,586,304	\$ 2,576,200	\$ 10,104	\$ 16,224,000	15.9%	
Staff Development	19,650	39,780	(20,130)	367,000	5.4%	
Professional Fees (Next Page)	202,648	193,120	9,528	1,301,000	15.6%	
Office Expense	62,314	77,260	(14,946)	469,000	13.3%	
Insurance	93,848	93,860	(12)	579,000	16.2%	
Member Services	62,446	82,940	(20,494)	522,000	12.0%	
Systems	189,459	220,780	(31,321)	1,223,000	15.5%	
Depreciation	19,923	19,960	(37)	120,000	16.6%	
Board of Retirement	74,335	75,540	(1,205)	614,000	12.1%	
Uncollectable Benefit Payments	-	-	-	53,000	0.0%	
Total Operating Expense	\$ 3,310,927	\$ 3,379,440	\$ (68,513)	\$ 21,472,000	15.4%	



ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

PROFESSIONAL FEES

YEAR TO DATE - ACTUAL VS. BUDGET

February 28, 2023

	<u>Actual</u> <u>Year-To-Date</u>	<u>Budget</u> <u>Year-To-Date</u>	<u>YTD Variance</u> <u>(Under)/Over</u>	<u>2023</u> <u>Annual</u> <u>Budget</u>	<u>% Actual to</u> <u>Annual Budget</u>
<u>Professional Fees</u>					
Consultant Fees - Operations and Projects ¹	\$ 62,083	\$ 55,640	\$ 6,443	\$ 354,000	17.5%
Actuarial Fees ²	64,300	64,300	-	653,000	9.8%
External Audit ³	48,200	48,200	-	144,000	33.5%
Legal Fees ⁴	28,065	24,980	3,085	150,000	18.7%
Total Professional Fees	\$ 202,648	\$ 193,120	\$ 9,528	\$ 1,301,000	15.6%

	<u>Actual</u> <u>Year-To-Date</u>	<u>Budget</u> <u>Year-To-Date</u>	<u>YTD Variance</u> <u>(Under)/Over</u>	<u>2023 Annual</u> <u>Budget</u>	<u>% Actual to</u> <u>Annual Budget</u>
<u>1 CONSULTANT FEES - OPERATIONS AND PROJECTS:</u>					
Administration					
Strategic Planning	6,750	-	6,750	-	0.0%
Total Administration	6,750	-	6,750	-	0.0%
Benefits					
Alameda County HRS (Benefit Services)	21,000	21,000	-	126,000	16.7%
Segal (Benefit Consultant/Retiree Open Enrollment)	21,500	21,840	(340)	131,000	16.4%
Total Benefits	42,500	42,840	(340)	257,000	16.5%
Fiscal Services					
Cashlog	-	-	-	20,000	0.0%
Total Fiscal Services	-	-	-	20,000	0.0%
Human Resources					
Lakeside Group (County Personnel)	12,833	12,800	33	77,000	16.7%
Total Human Resources	12,833	12,800	33	77,000	16.7%
Total Consultant Fees - Operations	62,083	55,640	6,443	354,000	17.5%
<u>2 ACTUARIAL FEES</u>					
Actuarial Valuation	-	-	-	85,000	0.0%
Actuarial Audit	22,500	22,500	-	135,000	16.7%
GASB 67 & 68 Valuation	-	-	-	52,000	0.0%
GASB 74 & 75 Actuarial	-	-	-	16,000	0.0%
Actuarial Standard of Practice 51 Pension Risk	-	-	-	30,000	0.0%
Supplemental Consulting	41,800	41,800	-	251,000	16.7%
Supplemental Retiree Benefit Reserve valuation	-	-	-	44,000	0.0%
Triennial Experience Study	-	-	-	40,000	0.0%
Total Actuarial Fees	64,300	64,300	-	653,000	9.8%
<u>3 EXTERNAL AUDIT</u>					
External audit	40,200	40,200	-	121,000	33.2%
GASB 67 & 68 audit	4,000	4,000	-	11,000	36.4%
GASB 74 & 75 audit	4,000	4,000	-	12,000	33.3%
Total External Audit Fees	48,200	48,200	-	144,000	33.5%
<u>4 LEGAL FEES</u>					
Fiduciary & Litigation	13,687	12,500	1,187	75,000	18.2%
Tax and Benefit Issues	-	4,160	(4,160)	25,000	0.0%
Miscellaneous Legal Advice	14,378	8,320	6,058	50,000	28.8%
Total Legal Fees	28,065	24,980	3,085	150,000	18.7%

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
TOTAL EXPENDITURES VS. PRIOR YEAR ACTUAL
For the Two Months Ending 2/28/2023

	<u>For the Month of February 2023</u>	<u>For the Month of February 2022</u>	<u>Variance</u>	<u>Year-To-Date 2023</u>	<u>Year-To-Date 2022</u>	<u>Variance</u>
STAFFING						
Salaries	755,051	748,805	6,246	1,639,723	1,505,236	134,487
Fringe Benefits	397,808	389,358	8,450	879,415	829,693	49,722
Temporary Staffing Cost	39,303	28,205	11,098	67,166	58,712	8,454
Staffing Total	<u>1,192,162</u>	<u>1,166,368</u>	<u>25,794</u>	<u>2,586,304</u>	<u>2,393,641</u>	<u>192,663</u>
STAFF DEVELOPMENT	5,488	8,461	(2,973)	19,650	33,806	(14,156)
PROFESSIONAL FEES						
Actuarial Fees	32,150	16,516	15,634	64,300	33,116	31,184
Consultant Fees - Operations	34,417	35,817	(1,400)	62,083	71,633	(9,550)
Consultant Fees - Legal	4,124	8,730	(4,606)	28,065	17,898	10,167
External Audit	24,100	23,600	500	48,200	47,200	1,000
Professional Fees Total	<u>94,791</u>	<u>84,663</u>	<u>10,128</u>	<u>202,648</u>	<u>169,847</u>	<u>32,801</u>
OFFICE EXPENSE						
Bank Charges & Misc. Admin	3,967	11,333	(7,366)	9,219	21,992	(12,773)
Building Expenses	3,301	843	2,458	6,603	1,294	5,309
Communications	8,111	11,371	(3,260)	17,620	21,751	(4,131)
Equipment Lease/Maintenance	7,701	10,250	(2,549)	15,811	18,518	(2,707)
Minor Equipment and Furniture	4,386	1,066	3,320	5,089	2,490	2,599
Office Supplies/Maintenance	1,742	1,134	608	5,901	2,190	3,711
Printing & Postage	928	1,192	(264)	2,071	2,163	(92)
Office Expense Total	<u>30,136</u>	<u>37,189</u>	<u>(7,053)</u>	<u>62,314</u>	<u>70,398</u>	<u>(8,084)</u>
INSURANCE	46,924	44,286	2,638	93,848	88,572	5,276
MEMBER SERVICES						
Disability - Legal Arbitration & Transcripts	(2,483)	0	(2,483)	(3,283)	7,942	(11,225)
Disability Medical Expense	15,800	11,664	4,136	27,800	15,664	12,136
Disability Claims Management	3,850	3,850	0	7,700	7,700	0
Health Reimbursement Acct. (HRA)	5,235	5,058	177	10,515	10,062	453
Member Training & Education	509	510	(1)	1,026	1,111	(85)
Printing & Postage - Members	565	8,568	(8,003)	7,884	10,782	(2,898)
Virtual Call Center	5,402	0	5,402	10,804	0	10,804
Member Services Total	<u>28,878</u>	<u>29,650</u>	<u>(772)</u>	<u>62,446</u>	<u>53,261</u>	<u>9,185</u>

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
TOTAL EXPENDITURES VS. PRIOR YEAR ACTUAL
For the Two Months Ending 2/28/2023

	<i>For the Month of February 2023</i>	<i>For the Month of February 2022</i>	<i>Variance</i>	<i>Year-To-Date 2023</i>	<i>Year-To-Date 2022</i>	<i>Variance</i>
SYSTEMS						
Business Continuity Expense	16,779	15,848	931	31,902	31,835	67
County Data Processing	10,874	10,385	489	21,766	20,761	1,005
Minor Computer Hardware	6,218	3,354	2,864	7,711	6,687	1,024
Software Maintenance & Support	68,093	60,490	7,603	128,080	117,963	10,117
Systems Total	<u>101,964</u>	<u>90,077</u>	<u>11,887</u>	<u>189,459</u>	<u>177,246</u>	<u>12,213</u>
DEPRECIATION						
Depreciation Expense	9,961	10,392	(431)	19,923	20,784	(861)
BOARD OF RETIREMENT						
Board Compensation	2,800	2,100	700	3,900	3,200	700
Board Conferences & Training	1,776	2,305	(529)	8,720	2,971	5,749
Board Employer Reimbursement	29,660	28,250	1,410	59,320	56,500	2,820
Board Miscellaneous Expense	1,085	777	308	2,395	1,917	478
Board Software Maint. & Support	0	986	(986)	0	1,972	(1,972)
Board of Retirement Total	<u>35,321</u>	<u>34,418</u>	<u>903</u>	<u>74,335</u>	<u>66,560</u>	<u>7,775</u>
GRAND TOTALS	<u>1,545,625</u>	<u>1,505,504</u>	<u>40,121</u>	<u>3,310,927</u>	<u>3,074,115</u>	<u>236,812</u>



MEMORANDUM TO THE OPERATIONS COMMITTEE

DATE: April 05, 2023

TO: Members of the Operations and Retiree Committee

FROM: Erica Haywood, Fiscal Services Officer *EH*

SUBJECT: Statement of Reserves and Supplemental Retirees Benefit Reserve (SRBR)
Status as of December 31, 2022

Statement of Reserves

The Statement of Reserves as of December 31, 2022, is attached for your review. The semi-annual interest crediting as of December 31, 2022, was completed on February 24, 2023.

For the six-month period ended December 31, 2022, approximately \$358.7 million of total interest (\$358.7 million in regular earnings and \$0.0 excess earnings) was credited to all the valuation reserve accounts, including the 401(h) account, SRBR and the advanced UAAL contribution reserve.

- Regular earnings of \$358.7 million were credited to the valuation reserve accounts, the 401(h) account and SRBR at a crediting rate of 3.4545% and the advance UAAL contribution reserve at a crediting rate of return of 1.5377%; a lower rate compared to the crediting rate of all other reserves due to the exclusion of \$87.1 million in available earnings deferred prior to June 30, 2021.
- There was no crediting of earnings above the assumed rate of return (excess earnings).

The total interest crediting rates were 3.4545% to the valuation reserve accounts and the 401(h) account, 3.4545% to the SRBR, and 1.5377% to the advance UAAL contribution reserve (see table below).

Earnings Classification	Valuation Reserve & 401(h) Accounts		SRBR		Advance UAAL Contribution Reserve	
	Amount	Rate	Amount	Rate	Amount	Rate
Regular Earnings	\$306,687,601	3.4545%	\$39,821,251	3.4545%	\$ 12,176,306	1.5377%
Excess Earnings	-		-		-	
Total Interest Credited	\$306,687,601	3.4545%	\$39,821,251	3.4545%	\$12,176,306	1.5377%

The process for crediting interest as of December 31, 2022, is presented in the table above. Note that for this semi-annual interest crediting period, the Contingency Reserve Account (CRA) was restored to 1% of total assets, \$104.8 million as of December 31, 2022, and the entire balance of \$104.8 million was subsequently withdrawn from the CRA to meet interest crediting shortfall. Without the use of the CRA funds, the interest crediting rates would have been 2.4098% for all

Interest Crediting Methodology as of December 31, 2022	
Expected Actuarial Earnings for the period	\$ 358,854,721.66
10 % Amortization of deferred amounts – (Sum of the last 10 periods)	(105,354,531.13)
Actuarial earnings on a smoothed basis	253,500,190.53
CRA adjustment to 1% of total assets as of 12/31/2022	400,202.07
Actuarial earnings available for interest crediting @ 2.4098 & 1.5377	253,900,392.60
Additional funds from the CRA to cover interest crediting shortfall	104,784,765.65
Total amount available for interest crediting @ 3.4545 & 1.5377%	\$ 358,685,158.25
Interest credited at a rate of 3.4545% to Valuation Reserves and 401(h) Account	306,687,601.09
Interest credited at a rate of 3.4545% to SRBR	39,821,251.37
Interest credited at the rate of 1.5377% to the advance UAAL Contribution Reserve (\$0.0 funds made available from CRA were applied)	12,176,305.79

other reserves and SRBR, and 1.5377% for the advance UAAL contribution reserve. None of the funds made available from CRA were applied to the advance UAAL contribution reserve, as the equitable share of the CRA balance was used in the June 30, 2022 crediting cycle.

There was a market *gain* of approximately \$110.2 million for the six-month period ended December 31, 2022, which was *lower* than the expected actuarial earnings of approximately \$358.9 million. As a result, \$248.6 million in *losses* were added to the market stabilization reserve (the difference of the actual market gain and the expected actuarial earnings). In addition, \$105.4 million of net *losses* from the previous ten (10) interest crediting cycles were recognized in the current interest crediting period. Thus, the deferred *losses* in market stabilization reserve increased from net deferred *losses* of \$650.8 million as of June 30, 2022, to \$794.1 million in deferred *losses* as of December 31, 2022.

Supplemental Retiree Benefit Reserve (SRBR) Status Report

The 10-year history of SRBR activity through December 31, 2022, is attached for your review. The December 31, 2022, ending balance of the SRBR account is approximately \$1.2 billion.

The break-down of the December 31, 2022 total interest crediting rate is as follows:

- Regular earnings were credited at the assumed rate of return of 3.4545%.
- There was no crediting of earnings above the assumed rate of return (excess earning).

The total interest credited to the SRBR for the six-month period ended December 31, 2022, was approximately \$39.8 million of regular earning and \$0.0 of excess earnings. For the year ended December 31, 2022 approximately \$79.4 million of regular earnings and \$10.7 excess earnings were credited to the SRBR.

For the six-month period ended December 31, 2022, the net deductions from SRBR were approximately \$24.0 million. These deductions include the net transfer to/from the employer

advance reserve for 401(h) contributions of \$23.4 million as well as payments of supplemental COLA and retired death benefits of \$0.6 million. For the year ended December 31, 2022, the net deductions from SRBR were approximately \$52.6 million. These deductions include the net transfer to/from the employer advance reserve for 401(h) contributions of \$45.8 million and \$5.6 million transfer for implicit subsidy as well as payments of supplemental COLA and retired death benefits of \$1.2 million.

Attachments:

- Statement of Reserves as of December 31, 2022.
- SRBR Status as of December 31, 2022.

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
STATEMENT OF RESERVES
For the Six Months Ended December 31, 2022

	Beginning Balances 6/30/2022	Net Contributions Benefits, Refunds & Transfers 7/1 - 12/31/2022	Transfer Employers UAAL Adv Rsrv 7/1 - 12/31/2022	Interest Crediting Process 7/1 - 12/31/2022 (3.4545%)	Allocation of Excess Earnings 7/1 - 12/31/2022 (0.0000%)	Ending Balances 12/31/2022
Member Reserves:						
Active Member Reserves	\$ 1,759,254,454	\$ 5,359,903	\$ -	\$ 57,901,521 ¹	- ¹	\$ 1,822,515,878
Employer Advance Reserve	1,518,491,284	41,822,558	32,628,400	50,173,342	-	1,643,115,584
401(h) Account - OPEB	8,877,399	(204,834)	-	306,669	-	8,979,234
Total Employer Reserves	1,527,368,683	41,617,724	32,628,400	50,480,011 ¹	- ¹	1,652,094,818
Retired Member Reserves	5,626,999,932	(147,311,139)	10,246,827	198,306,068 ¹	- ¹	5,688,241,688
Supplemental Retiree Benefit Reserve:	1,152,738,957	(23,951,706)		39,821,252 ¹	- ¹	1,168,608,503
Contingency Reserve	105,184,968			(105,184,968) ²		-
Market Stabilization Reserve	(650,838,596)			-	(143,274,825)	(794,113,421)
Total Reserves at Fair Value / Fiduciary Net Position	9,520,708,398	(124,285,218)	42,875,227	241,323,884	(143,274,825)	9,537,347,466
Advance UAAL Contribution Reserve						
County-Safety UAAL Advance Reserve	779,314,504		(42,368,872)	11,983,343 ¹	- ¹	748,928,975
LARPD-General UAAL Advance Reserve	12,549,014		(506,355)	192,963 ¹	- ¹	12,235,622
Total Fiduciary Net Position	\$ 10,312,571,916	\$ (124,285,218)	\$ -	\$ 253,500,190	\$ (143,274,825)	\$ 10,298,512,063

Notes: 1. Interest credited as of 12/31/22 includes \$358,685,158 of regular earnings and \$0 excess earning allocation to the SRBR Reserve, advance UAAL contribution reserves, and all other Non-SRBR reserves.

2. Amount includes a decrease of the CRA by \$400,202 to adjust the balance at 1% total assets as of 12/31/22. After CRA was restored to 1% total assets, there were subsequent withdrawals of \$104,784,766 from the CRA to fund semi-annual interest crediting shortfall. As a result, the CRA balance at 12/31/22 was \$0, or 0.00% of total assets.

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
STATEMENT OF RESERVES
For the Year Ended December 31, 2022

	Beginning Balances 1/1/2022	Net Contributions Benefits, Refunds & Transfers 1/1 - 12/31/2022	Transfer Employers UAAL Adv Rsrv 1/1 - 12/31/2022	Interest Crediting Process 6/30/22 & 12/31/2022 (3.5000%) & (3.4545%)	Allocation of Excess Earnings 6/30/22 & 12/31/2022 (0.1248%) & (0.0000%)	Ending Balances 12/31/2022
Member Reserves:						
Active Member Reserves	\$ 1,752,647,256	\$ (46,785,716)	\$ -	\$ 114,632,127 ¹	2,022,211 ¹	\$ 1,822,515,878
Employer Advance Reserve	1,465,340,113	14,740,894	64,974,394	96,411,967	1,648,216	1,643,115,584
401(h) Account - OPEB	9,229,285	(891,259)	-	629,694	11,514	8,979,234
Total Employer Reserves	1,474,569,398	13,849,635	64,974,394	97,041,661 ¹	1,659,730 ¹	1,652,094,818
Retired Member Reserves	5,414,392,920	(150,194,014)	20,396,703	396,578,487 ¹	7,067,592 ¹	5,688,241,688
Supplemental Retiree Benefit Reserve:	1,131,048,474	(52,597,453)	-	79,407,948 ¹	10,749,534 ¹	1,168,608,503
Contingency Reserve	120,183,593		-	(120,183,593) ²		-
Market Stabilization Reserve	1,132,947,106				(1,927,060,527)	(794,113,421)
Total Reserves at Fair Value / Fiduciary Net Position	11,025,788,747	(235,727,548)	85,371,097	567,476,630	(1,905,561,460)	9,537,347,466
Advance UAAL Contribution Reserve						
County-Safety UAAL Advance Reserve	802,329,252	-	(84,367,306)	30,967,029 ¹	- ¹	748,928,975
LARPD-General UAAL Advance Reserve	12,744,897	-	(1,003,791)	494,516 ¹	- ¹	12,235,622
Total Fiduciary Net Position	\$ 11,840,862,896	\$ (235,727,548)	\$ -	\$ 598,938,175	\$ (1,905,561,460)	\$ 10,298,512,063

Notes: 1. Interest credited as of 06/30/22 and 12/31/22 were \$360,436,610 and \$358,685,158, respectively. The allocation of earnings above the assumed rate of return were \$21,499,067 and \$0 as of 6/30/22 and 12/31/22, respectively.

2. Net amount includes decrease to the CRA of \$14,998,625 as of 6/30/22 and \$400,202 as of 12/31/22, to restore the balance at 1% total assets. There were no subsequent withdrawals of funds from the CRA to fund semi-annual interest crediting shortfall as of 6/30/22. The entire restored balance of the CRA or \$104,784,766 was subsequently withdrawn to fund the interest crediting shortfall as of 12/31/22. As a result, the CRA balance at 12/31/22 was \$0, or 0.00% total assets.

**ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
SUPPLEMENTAL RETIREES' BENEFIT RESERVE (SRBR)
For the Ten Years Ended December 31, 2013 - December 31, 2022**

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Beginning Balance	\$570,878,929	\$ 643,056,500	\$ 789,826,877	\$ 853,842,371	\$ 874,385,246	\$ 893,770,614	\$ 919,488,617	\$ 924,709,823	\$ 931,754,157	\$ 1,131,048,474
Deductions:										
Transferred to Employers Advance Reserve	32,240,449	34,039,593	36,528,264	33,818,832	38,327,914	43,777,409	44,858,371	45,456,100	46,772,130	47,476,858
Employers Implicit Subsidy	7,370,466	6,992,822	5,320,953	6,021,451	8,787,596	5,800,563	6,899,139	6,446,702	7,484,411	5,593,922
Supplemental Cost of Living	2,067,218	1,849,140	1,555,924	1,350,784	1,231,500	1,134,613	1,181,244	1,116,523	932,177	943,290
Death Benefit - Burial - SRBR	5,525	223,529	213,909	187,081	187,060	196,576	216,834	230,747	256,683	240,383
ADEB (Active Death)	-	-	-	-	-	-	-	-	-	-
Total Deductions	<u>41,683,658</u>	<u>43,105,084</u>	<u>43,619,050</u>	<u>41,378,148</u>	<u>48,534,070</u>	<u>50,909,161</u>	<u>53,155,588</u>	<u>53,250,072</u>	<u>55,445,401</u>	<u>54,254,453</u>
Additions:										
Interest Credited to SRBR	38,786,516	54,031,947	62,722,797	60,730,023	66,715,938	64,827,682	57,022,294	58,878,406	69,152,162	79,407,948
Excess Earnings Allocation	75,074,713 (1)	132,455,002	43,770,247	-	-	10,574,982	-	-	184,050,056	10,749,534
Transferred from Employers Advance Reserve	-	3,388,512 (2)	1,141,500	1,191,000	1,203,500	1,224,500	1,354,500	1,416,000	1,537,500	1,657,000
Total Additions	<u>113,861,229</u>	<u>189,875,461</u>	<u>107,634,544</u>	<u>61,921,023</u>	<u>67,919,438</u>	<u>76,627,164</u>	<u>58,376,794</u>	<u>60,294,406</u>	<u>254,739,718</u>	<u>91,814,482</u>
Ending Balance	<u>\$643,056,500</u>	<u>\$ 789,826,877</u>	<u>\$ 853,842,371</u>	<u>\$ 874,385,246</u>	<u>\$ 893,770,614</u>	<u>\$ 919,488,617</u>	<u>\$ 924,709,823</u>	<u>\$ 931,754,157</u>	<u>\$ 1,131,048,474</u>	<u>\$ 1,168,608,503</u>

Notes

(1) The Excess Earnings allocation of \$75,074,713.03 is a total of \$72,013,436.53 from investment earning above the assumed rate of return and \$3,061,276.50 from additional excess earning made available from the dispersal of the Death Benefit-Burial Reserve as of 12/31/13.

(2) These amounts include reclassification of OPEB Administrative Expense contribution reimbursement activities and interest from January 2012 through June 2014; and normal activities for the six month period of July 2014 through December 2014. The SB 1479 reimbursements from the Employer Advance Reserve were inadvertently booked to the 401(h) account instead of SRBR. A total misclassified balance of \$2,649,500 and regular credited interest of \$182,511.54 were transferred from the 401(h) account to SRBR.

Amounts are rounded to the nearest dollar and include <\$1 rounding differences.