



# *Declining Employer Payroll Policy*

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## I. Purpose and Background

A participating Plan Sponsor (employer) in the Alameda County Employees' Retirement Association (ACERA) may experience an actual or anticipated material decline in the payroll attributable to its ACERA active members (ACERA-covered payroll). The Declining Employer Payroll Policy is intended to establish guidelines by which ACERA intends to assure that such employer will continue to satisfy its obligation to timely pay all unfunded actuarial accrued liability (UAAL) attributable to the prior and future service of active, retired and deferred ACERA members who are or were the participating employer's employees, and their beneficiaries.

## II. Background and Objectives

A. As a general rule, under ACERA's practice in place prior to the adoption of this Declining Plan Sponsor Payroll Policy, ACERA determined employers' contribution obligations for UAAL by applying a contribution rate determined by ACERA's actuary to the employer's ACERA-covered payroll (the percentage-of-payroll methodology). For employers whose payrolls are generally consistent with ACERA's actuarial assumptions regarding payroll growth, or those whose payroll is growing faster than the actuarial assumptions, the percentage-of-payroll methodology continues to be appropriate. But for employers whose ACERA-covered payroll is declining, or is expected to decline, materially over time, the Board of Retirement has determined that the percentage-of-payroll methodology is not the appropriate means of collecting employer contributions owed to the Association. The objectives of this Declining Employer Payroll Policy are to (i) ensure equitable and adequate funding of UAAL in cases involving employers with declining payrolls, (ii) approve procedures for identifying employers who should be subject to this Policy, and (iii) approve a different methodology for determining any UAAL attributable to such employers and setting the amount and schedule of the contributions needed to fund such UAAL. This Policy does not change the methodology regarding how contributions for "normal cost" are determined for participating employers.

- B. Generally, the objectives of this Policy also are to ensure compliance with County Employees Retirement Law of 1937 (Gov. Code §31450 et seq., as amended), the Public Employees' Pension Reform Act of 2013 (Gov. Code §§7522-7522.74), and other applicable provisions of law. Pursuant to Gov. Code §§7522.52, 31453.5, 31581, 31582, 31584, 31585, 31586, 31611, and other applicable provisions of law, a participating employer remains liable, and must make the required appropriations and transfers to ACERA for the participating employer's share of liabilities attributable to its officers and employees who are and may be entitled to receive retirement, disability and related benefits from ACERA.
  
- C. It is the Board of Retirement's intent to allow an employer covered by this Policy to satisfy its funding obligation in a manner which provides the employer reasonable flexibility; however, primary consideration will be given to ensuring the adequacy of the assets attributable to the employer to satisfy the employer's funding obligations. This will generally require redetermination of the funding obligations of the employer for several years.

### III. Policy Procedures and Guidelines

Absent exigent circumstances or unless otherwise expressly approved by the Board of Retirement at a duly-noticed public meeting, the procedures and guidelines for implementing this Policy are set forth below.

#### A. Commencement of Coverage – Triggering Events

- i. This Policy covers only those employers for whom the Board determines, based on a recommendation from ACERA's Chief Executive Officer (CEO), that a triggering event as described in this section has occurred and who are not excluded from coverage under this Policy as described in section 6 and/or section 7 below. The fact that a triggering event may have occurred in the past does not prevent ACERA from applying this policy to that employer. The Board hereby directs the CEO to work with ACERA's staff and ACERA's actuary to obtain the information (e.g., ACERA-covered payroll history) needed for the Board to make determinations regarding triggering events. The CEO is further directed to report to the Board, at least annually, regarding these activities.

- a. Triggering event resulting from ceasing to enroll new hires. Some ACERA participating employers cease to enroll new hires with ACERA but, for a period of time, continue to have at least some previously-enrolled employees maintaining their status as active ACERA members. These employers' ACERA-covered payroll will eventually diminish to zero as their active employees retire or otherwise terminate employment. Examples of employers in this category may include an employer that is acquired by another entity that is not an ACERA participating employer, or an ACERA employer that covers some of its employees through another pension system such as CalPERS or a 401(k) plan. There may be other examples as well.
- b. Triggering event resulting from a material and permanent reduction in ACERA-covered payroll. Some employers may experience a material reduction in their ACERA-covered payroll, but nevertheless continue to enroll their new hires with ACERA. The reduction may be sudden (e.g., due to a discrete event such as a partial loss of funding, or partial outsourcing), or it may be more gradual, over a period of years, and might not be tied to a discrete event. Generally, the Board would determine that this type of triggering event has occurred only if the Board expects that the reduction in employer's ACERA-covered payroll is expected to be permanent or for an indefinite period of time with no reasonably foreseeable end. Generally, by its nature, the determination whether this type of triggering event has occurred is more subjective than that described in subparagraph a) immediately above.

**B. Exclusions from Coverage; Terminations of Coverage**

- i. This Policy also covers only those employers which are a) financially-viable entities when a triggering event occurs, and b) which ACERA expects to continue indefinitely thereafter to be financially-viable entities. This Policy does not cover any other situation, including, without limitation, an employer going out of business by reason of dissolution, loss of funding, consolidation or merger (unless there is a surviving financially-viable entity that is acceptable to the Board that will make the ongoing payments under the Policy). This Policy also does not cover a "withdrawing employer" who ceases to provide ACERA membership for all of the employer's active ACERA members (i.e., as of a date certain, withdraws both new hires and existing actives from membership with ACERA).

2. The Board of Retirement also recognizes that participating employers covered by this Policy will have UAAL funding obligations for several years. Therefore, if concerns arise during that period of time regarding the employer's ongoing existence as a financially-viable entity, the Board may remove the employer from coverage under this Policy and/or take any other measures that may be available to ensure the actuarial soundness of the Retirement Association including, without limitation, assessing the projected entire amount of the employer's UAAL (as recommended by the fund's actuary and approved by the Board) using a lower discount rate and payable in a single sum immediately due.

### C. Procedures

1. The CEO will (i) work with ACERA staff and actuary, and ACERA's participating employers to obtain the information (e.g., ACERA-covered payroll history, financial reports) needed for the Board to make determinations regarding triggering events and exclusions from, or terminations of, coverage and (ii) report to the Board, at least annually, regarding these activities.
2. Upon a recommendation from the CEO and notice to the affected participating employer, the Board will make a determination at a duly-noticed public meeting regarding (i) whether a triggering event has occurred for the employer, (ii) whether the employer should be excluded from coverage under this Policy, and (iii) for those employers that the Board has previously determined to be covered under the Policy, whether their coverage should be terminated under section 6 above. Employers may be required to provide ACERA with updated employee census and payroll data and financial reports. See Gov. Code §31543.)
3. If the Board determines that a triggering event has occurred and the employer is not excluded from coverage under the Policy, then, solely for purposes of determining the covered employer's UAAL contribution obligation, ACERA will segregate on its books all assets and liabilities attributable to the employer based upon the recommendation of ACERA's actuary, and shall maintain such separate accounting for the employer until all of the participating employer's obligations to ACERA have been fully satisfied.
4. ACERA's actuary will determine, and certify to the Board of Retirement, the covered employer's funding obligation for its initial UAAL, which obligation shall

not be pro-rata based on payroll, but rather based on the employer's actuarial accrued liability (AAL) including in active member, when determinable. Otherwise, the Board may use other methodologies to determine liability as recommended by their actuary, including but not limited to the pro-rata share based on payroll. The Board may determine to require the employer's contributions to be paid in level, fixed-dollar amounts over a period not to exceed twenty (20) years, beginning on July 1 of the calendar year immediately after the year in which the triggering event occurs.

5. The actuary will use the actuarial valuation performed for ACERA as of the end of the calendar year immediately prior to the calendar year in which the triggering event occurs (and based on all of ACERA's then current actuarial assumptions and methodologies) to determine the initial valuation value of assets (VVA), a smoothed value, allocated to the covered employer. That initial VVA will be a pro-rata allocation based on the employer's AAL (i.e., based on the employer's initial UAAL allocation determined in accordance with section 10 above). Later values of the VVA (i.e., those used in the future valuations described below) shall be determined by rolling forward the initial VVA, adding contributions, deducting benefit payments, and crediting earnings at the actual smoothed (VVA) earnings rate on total ACERA assets.

6. Annually, after the determination of the covered employer's initial funding obligation, as part of the regular annual actuarial valuation of the plan, ACERA's actuary will measure any change in the UAAL

of the participating employer due to actuarial experience or changes in actuarial assumptions. In addition to the amortized payments for the covered employer's initial UAAL funding obligation determined as of the initial valuation, the employer will be liable for, and must contribute to ACERA, any such new UAAL determined as of subsequent valuations, based upon an amortization schedule recommended by the actuary and adopted by the Board of Retirement. ACERA will hold any negative UAAL (Surplus) to be applied against any future UAAL of the covered employer.

7. If any Surplus remains after the covered employer has satisfied all of its UAAL obligations (Final Surplus), ACERA will distribute the Final Surplus in accordance with the terms of applicable law.

8. Notwithstanding anything to the contrary herein, the ACERA Board of Retirement hereby reserves the right to pursue any other remedies under applicable law that, depending on the circumstances, may be available to “ensure the actuarial soundness of the retirement system” (CERL §31564.2(d)).

IV. Policy Review

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

V. Policy History

- A. The Board of Retirement adopted this Policy on October 18, 2018.