



Donald C. Kendig, CPA
Retirement Administrator

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

Steven J. Jolly, Chair
Dr. Rod Coburn, III, Vice Chair
Laura P. Basua
Gregory Baxter
Alan Cade, Jr.
Vicki Crow
Robert Dowell
Eulalio Gomez
Mary Ann Rogozinski, Alternate

DATE: July 20, 2016

TO: Board of Retirement

FROM: Donald C. Kendig, CPA,
Retirement Administrator

Staff Contact: Becky Van Wyk, CPA
Assistant Retirement Administrator

SUBJECT: **Approval of Updates to FCERA Policies: Board Operations Policy, Overpayment or Underpayment of Member Contributions, Overpayment or Underpayment of Retirement Benefits – RECEIVE AND FILE; APPROVE**

Background and Discussion

The Fresno County Employees' Retirement Association (FCERA) policies are to be reviewed periodically and many indicate a minimum of every three years, and have been last reviewed during various dates. For many, their cyclical review is overdue and they are being brought before the Board for confirmation and adoption. The policies are presented with new formatting and are listed as follows with any substantive changes noted:

- Board Operations (12/16/15) – Deletes the existing paragraph on reconsidering prior board actions with a separate and more complete section that extends the opportunity to bring a request to reconsider by any person, Board member or affected agency within thirty (30) days of the Board action.
- Overpayment or Underpayment of Member Contributions (12/16/15) – Expands policy to include collecting underpayments from members that have terminated their employment without retiring.
- Overpayment or Underpayment of Retirement (12/16/15) – No changes recommended.

It is recommended that the proposed policy updates be adopted as presented. They may also be adopted as modified for board directed changes.

Fiscal and Financial Impacts

None from the recommended changes.

July 20, 2016

Consideration of FCERA Policies

Page 2

Recommended Action(s)

1. Approve the updated Fresno County Employees' Retirement Association (FCERA) policies: Board Operations Policy, Overpayment or Underpayment of Member Contributions, Overpayment or Underpayment of Retirement, as presented, or as modified for Board directed changes.

Attachment(s)

1. Proposed Fresno County Employees' Retirement Association (FCERA) policies
 - a. Board Operations Policy
 - b. Overpayment or Underpayment of Member Contributions
 - c. Overpayment or Underpayment of Retirement Benefits
2. Redline of the Fresno County Employees' Retirement Association (FCERA) policies
 - a. Board Operations Policy (12/16/15)
 - b. Overpayment or Underpayment of Member Contributions (12/16/15)

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)
BOARD OPERATIONS POLICY

Purpose

- 1) This Board Operations Policy provides guidelines describing:
 - a) The appointment of Board Officers;
 - b) The establishment of board committees; and
 - c) The manner in which meetings of the Board and its committees will be conducted so as to ensure that such meetings are efficient and productive.

Definitions

- 1) The *1937 Act* shall mean The County Employees Retirement Law of 1937. (*Cal Gov. Code, § 31450 et seq.*)
- 2) *PEPRA* shall mean the California Public Employees' Pension Reform Act of 2013. (*Cal Gov. Code § 7522 et seq.*)
- 3) *The Brown Act* shall mean the Ralph M. Brown Act, (*Cal Gov. Code § 54950 et. seq.*), also known as the Open Meeting Laws.
- 4) The *Bylaws* shall mean FCERA's *Bylaws and Regulations of the Board of Retirement*.

Policy Guidelines

- 1) Board Officers
 - a) Annually at the last regular meeting in December, the Board shall elect one of its members as Chair, and one of its members as Vice-Chair. Board Officers shall hold office for a term of one year or until a successor is duly elected and qualified. (Bylaws § 2.1.1)
 - b) If a Board Officer fails for any reason to complete his or her term, the Board shall select a successor for the balance of the unexpired term at its next regular meeting. (Bylaws §2.1.1)
 - c) Officers may be removed by a two-thirds vote of the entire Board (i.e., six board members). (Bylaws § 2.1.1)
 - d) A board member may be elected to the position of Chair for up to two consecutive terms, unless approved for additional terms by a two-thirds vote of the entire Board.
 - e) The Retirement Administrator shall serve as Secretary of the Board. (Bylaws § 2.1.3)

2) Committees of the Board

- a) The standing committees of the Board shall be as follows:
 - i. Audit Committee
 - ii. Budget Committee
 - iii. Disability Committee
 - iv. Personnel Committee
 - v. Board Consultants Evaluation Committee
- b) Annually at the first regular meeting in January, the Chair shall recommend to the Board for appointment committee Chairs, members and a committee alternate to each standing committee on an annual basis, and to each ad hoc committee as needed. In recommending committee appointments, the Chair shall seek input from the Board during board meetings and shall consider the following factors:
 - i. The need to maintain a level of continuity in committee membership;
 - ii. The need to rotate the composition of committees to provide diversified experience to board members;
 - iii. The need to ensure that, to the extent possible, board members' committee appointments reflect their areas of interest;
 - iv. The need to maintain balance between the elected and appointed members of the Board; and
 - v. The need to minimize conflicts of interest.
- c) The Board may approve the establishment of new standing and ad hoc committees in consultation with the Retirement Administrator.
- d) Standing and ad hoc committees shall be composed of at least three board members and one committee alternate or four board members with no alternate. Committee members shall be selected from among the board members and alternate board members of the Board.
- e) The primary function of committee alternates is to serve as voting committee members at committee meetings when necessary to satisfy quorum requirements, but alternates may attend any meeting of the committee as an observer.

- f) In the event that the committee chair is unable or unwilling to complete his or her term, the committee shall elect a replacement from among its members to serve for the balance of the unexpired term.
- g) The Retirement Administrator shall ensure board committees receive adequate support from staff, and shall assign a designated staff contact to each committee.
- h) The Retirement Administrator shall recommend and the Board shall adopt a charter for each standing and ad hoc committee, that provides a description of the committee's mandate, specifies a staff contact, and, in the case of ad hoc committees, contains a provision for disbanding the committee once it has fulfilled its mandate. These materials require board approval.

3) Attendance

- a) Board members shall make every reasonable effort to attend all meetings of the Board and all meetings of committees on which they serve. Should a board member be unable to attend a meeting of the Board or a committee on which they serve, the board member shall notify the Retirement Administrator as soon as possible to help ensure that a quorum will be achieved.
- b) Board members who are not members of a standing committee may attend any meeting of that standing committee, as observers. Board members who are not members of an ad hoc committee may not attend a non-public meeting of that committee, but may attend a public meeting of that committee, as observers.
- c) If the Chair is absent from a board meeting, the Vice-Chair shall preside. If the Chair and Vice-Chair are both absent from a board meeting, the Board shall elect a Chair pro tem for the meeting. Alternate members of the Board are eligible to serve as Chair pro tem when sitting for a regular member. (Bylaws § 2.1.2).
- d) If a committee chair is unavailable to attend a meeting, then he shall designate another member of the committee to serve as committee chair in his or her absence in writing via memo or email. If the committee chair is unable to do so, the remaining committee members may appoint a pro tem committee chair from among themselves for the meeting.
- e) The Retirement Administrator shall provide a report to the Board annually, and more often if requested by the Board or a committee, of attendance at meetings. (Bylaws § 2.2.3)

4) Scheduling of Meetings

- a) Regular meetings of the Board shall be held on the first and third Wednesdays of each month at 8:30 a.m. Meetings shall generally be held in the Board room of the FCERA offices. (Bylaws § 2.6.1).
- b) Special meetings of the Board may be called at any time by the Chair or by a majority of the members of the Board only as provided in the Brown Act (Bylaws § 2.6.2.a).
- c) Emergency meetings of the Board may be called by the Chair, the Administrator, or by a majority of the members of the Board only as provided in the Brown Act (Bylaws § 2.6.2.b).
- d) At its first meeting each year, each standing committee may establish a schedule of meetings for the balance of the year, unless it expects to meet on an irregular basis. The committee chair, in consultation with the Retirement Administrator, may cancel or reschedule a meeting, if it is apparent that there will not be a quorum or it is deemed that there are insufficient issues to warrant a meeting. Attempts will be made to provide all committee members at least one week's notice of cancellation of any meeting.

5) Agenda

- a) The agenda shall be posted in accordance with the provisions of The Brown Act. Accordingly, the Secretary to the Board shall prepare and post a written agenda for all regular meetings of the Board, at least 72 hours in advance of the subject meeting. Agendas for special board meetings and committee meetings shall be prepared and posted at least 24 hours in advance of the subject meeting.
- b) The agenda and materials for board and standing and ad hoc committee meetings shall generally be distributed to board members at least 72 hours in advance of the subject meeting. Said materials shall also be made available to members of the public in accordance with The Brown Act.
- c) Items may be placed on the board or committee meeting agenda, prior to the agenda being posted, by any of the following means:
 - i. By action of the Board or committee at a previous meeting;
 - ii. By the Board or committee chair;
 - iii. By the Retirement Administrator; or

- iv. At the request of a board member, a plan member or any other party, with the approval of the Board, Board Chair, appropriate committee chair, or the Retirement Administrator.
- d) Once posted, items may be added to a board or committee meeting agenda only in accordance with The Brown Act.
- e) As more particularly stated in the Brown Act, no action or discussion shall generally be undertaken on any item not appearing on a meeting agenda, except that members of the Board or the committee, as the case may be, or its staff may:
 - i. Briefly respond to statements made or questions posed by members of the public during Public Comment;
 - ii. Ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities;
 - iii. Provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda. (The Brown Act, Cal Gov. Code § 54954.2. (a))
- 6) Public Comment
 - a) As more particularly stated in The Brown Act:
 - i. Every agenda for regular board or standing committee meetings shall provide an opportunity for members of the public to directly address the Board or committee on any item of interest to the public, before or during the body's consideration of the item, that is within the subject matter jurisdiction of the body, provided that no action shall be taken on any item not appearing on the agenda (unless the action is otherwise authorized by subdivision (b) of Cal Gov. Code § 54954.2 of The Brown Act.)
 - ii. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.
 - b) As more particularly stated in the Brown Act, with respect to any item that is already on the agenda, the public will be given the opportunity to comment before or during the Board or committee's hearing of the item. When a member of the public raises an issue not yet before the Board or committee, the Board may engage in limited discussion of the item, but no action shall be taken on the item (unless the action is otherwise authorized by subdivision (b) of Cal Gov. Code § 54954.2).

- c) At the discretion of the presiding officer, the duration of any address by a member of the public may be limited to five minutes.
- d) Members of the public shall be encouraged to inform FCERA in advance of their intention to address the Board or a committee of the Board at a public meeting, so that FCERA may set or modify the agenda to best accommodate the public.
- e) If the Board or a committee expects that a number of public members may wish to address the Board on a particular matter at an upcoming meeting, it may call a special meeting devoted strictly to public comment if it believes that a special meeting may be more convenient or effective for the Board and the public.
- f) In the event that more than one member of the public wishes to address the Board or a committee on an issue, the Board or committee will generally allow all such members to speak consecutively before addressing any of them.
- g) Notwithstanding the immediately preceding paragraph, the Board will generally refrain from immediately responding to or taking action on comments from the public, but will instead, where appropriate, direct staff or advisors to consider the comments and provide the Board or committee with recommendations at a subsequent meeting.

7) Rules of Order

- a) Except as otherwise provided in this policy, the By-laws and Regulations of the Board of Retirement, or The Brown Act, Robert's Rules of Order (most recent edition) shall guide the Board in its proceedings. (Bylaws § 2.4)
- b) The order of business shall be set in the Chair's discretion, unless otherwise directed by the majority of the Board. (Bylaws § 2.4)

8) Quorum and Voting

- a) The Board can have up to two alternate members, one elected by the safety members and one elected by the retired members. For purposes of this policy, "voting members" include any alternate member who is serving in the absence of another board member, in accordance with the 1937 Act.
- b) Five voting members of the Board shall constitute a quorum for board meetings. (Bylaws § 2.3).
- c) A majority vote of the quorum present at the time of voting shall govern the decisions of the Board, unless otherwise specifically provided for in the 1937 Act, other applicable law, or the Bylaws. (Bylaws § 2.3)

- d) The Chair shall have a vote on all questions and shall not be required to relinquish the officer position in order to participate in discussion (Bylaws § 2.1.4).
- e) A majority of voting members shall constitute a quorum for committee meetings.
- f) All formal actions taken by a committee must be approved by the Board at a scheduled board meeting, unless the committee's charter specifically authorizes independent action by the committee.

9) Reconsideration

- a) When the Board has adopted a resolution making determinations or has taken action on any item brought before it for determination, any person, including a Board member, or affected agency may file a written request with the Retirement Administrator requesting amendments to or reconsideration of the resolution or Board determination. The request shall state the specific modification to the resolution or determination being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. Any request that, on its face, fails to state new or different facts that could not have been presented previously shall not be deemed to be a complete request.
- b) The person or agency shall file the written request with the Retirement Administrator or his or her designee no later than thirty (30) days of the date of Board action. If no person or agency files a timely and complete request, the Board shall not take any action pursuant to this section.
- c) Upon receipt of a timely and complete request by the Retirement Administrator, the time to file any action, including, but not limited to, an action pursuant to any provisions governing the time within which the Board is to act, shall be tolled for the time that the Board takes to act on the request.
- d) The Retirement Administrator shall place the timely and complete request on the agenda of the next meeting of the Board for which notice can be given. The Retirement Administrator shall give notice of the consideration of the request by the Board in the same manner as for the original proposal. The Retirement Administrator may give notice in any other manner as he or she deems necessary or desirable so long as such notice complies with Board policy and state law.
- e) At that meeting, the Board shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed thirty-five (35) days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the Board.

- f) At the conclusion of its consideration, the Board may approve or disapprove the request. If the Board disapproves the request, it shall not adopt a new resolution making determinations or take any action to alter its original determination. If the Board approves the request, the Board shall adopt a resolution or action, as appropriate, making determinations that shall supersede the resolution previously issued or determination previously made.
- g) The determinations of the Board shall be final and conclusive. No person or agency shall make any further request for the same matter or a substantially similar matter, as determined by the Board.
- h) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected without further action by the Board.

10) Minutes and Records

- a) The Secretary to the Board shall cause to be recorded in the minutes of board meetings the following:
 - i. The time and place of each meeting of the Board;
 - ii. The names of board members present;
 - iii. The names of staff present, and any service providers present, and the firm they represent;
 - iv. The time at which a board member arrived or left the meeting after its commencement or prior to its conclusion; and
 - v. All official acts of the Board, together with the votes thereon, except for action that is unanimous; and when requested, a member's dissent or approval with his or her reasons. (Bylaws § 2.5.1)
 - vi. Minutes of closed sessions, when appropriate under the Brown Act, Cal Gov. Code § 54957.2.
- b) The Secretary shall cause the board minutes to be written and presented for approval no later than the second succeeding regular meeting. The minutes or a true copy thereof submitted and signed by the Secretary after approval by the Board shall form part of the permanent records of the Board. (Bylaws § 2.5.1)
- c) Minutes of committee meetings shall be similarly prepared by the committee's staff contact, and presented for approval at the next committee meeting. The minutes or a true copy thereof submitted and signed by the Secretary after approval by the committee shall form part of the permanent records of the Board.

- d) Both board and committee minutes shall focus on describing any actions that occurred, and shall provide sufficient detail to evidence the Board's deliberations in the matter.
- e) Staff will provide the Board with a regular report that enables the Board to track, from meeting to meeting, the status of prior Board directions to staff.

Policy Review

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

Policy History

- 1) This policy was adopted by the Board on April 4, 2007.
- 2) The Board of Retirement reviewed and modified this policy on September 19, 2007, August 4, 2010, December 16, 2015, and July 20, 2016.

Secretary's Certificate

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

July 20, 2016

Date of Action:

By: Retirement Administrator

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)
POLICIES AND PROCEDURES GOVERNING THE OVERPAYMENT OR UNDERPAYMENT OF
MEMBER CONTRIBUTIONS

The Board of Retirement ("Board") has a fiduciary obligation to conserve retirement fund assets and protect the integrity of the fund, for the benefit of the members and beneficiaries of the Fresno County Employees' Retirement Association ("FCERA").

The Board determines the required member contributions in accordance with law and in consultation with its actuary. Subject to all applicable laws, it shall be FCERA's policy to make every reasonable effort to recover from a member the amount of any underpayment of contributions, and to remit to a member the amount of any overpayment of contributions, consistent with this policy and the procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of member contributions, and within a reasonable period of time after written notification to the affected member, FCERA will correct any overpayment or underpayment of member contributions.

These policies and procedures are designed for use when errors affect an individual member's contributions. In the event of a system-wide error that affects multiple members' contributions, the Board may implement a system-wide correction process that it determines is appropriate under all the circumstances.

In the event of any inconsistency between applicable law and these Policies and Procedures, the law shall take precedence.

I. Underpayment of Contributions by Members

- 1) Whenever an underpayment of contributions is discovered, FCERA shall make a prospective adjustment to the member's contributions and take all reasonable steps to recover the full amount of all past underpayments, with "appropriate interest," subject to the provisions of this policy and applicable law. If the underpayment was due to fraud or dishonest conduct by the member, or to the member providing inaccurate information to FCERA or the member's employer, appropriate interest shall be FCERA's actuarially assumed rate of return that was applicable for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid. If the underpayment was the result of an error by FCERA or the member's employer, appropriate interest shall be 3% per annum for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid.
- 2) FCERA will recover underpayments either by (a) a lump sum payment from the member, (b) additional amounts added to the member's future contributions, over a period of time as determined by the Board, or (c) pre-tax offsets to future benefit payments to the member, over a period of time as determined by the Board, unless the Board, in its

discretion and because of legal or practical considerations, determines that another process is warranted.

- 3) The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of underpayments only where the cumulative total amount underpaid by the member is \$50 or more. Accordingly, the Administrator is authorized to not seek recovery of any underpayments where the total amount underpaid by the member is less than \$50.
- 4) The Administrator shall have authority, on the advice of legal counsel, to compromise recovery of underpayments when the total amount of underpayment, not including interest, is less than \$5,000. Only the Board may compromise claims in which the total amount of underpayment, not including interest, is \$5,000 or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the Administrator and/or the Board when determining whether to compromise a claim. Compromising claims may include a different method of repayment than is otherwise provided by this policy and/or a partial forgiveness of the amounts underpaid.
- 5) In cases where there is no evidence that the underpayment resulted from the fraud or dishonest conduct by the member, or from the member providing inaccurate information to FCERA or the member's employer, FCERA will only seek recovery of amounts underpaid by the member for the three years immediately before the error was corrected. Considering all relevant factors (including collection issues and principles of equity), the Board finds that seeking only three years of underpayments under those circumstances constitutes "reasonable steps" to recover the full amount of the underpayments. In cases where there is evidence that the underpayment resulted from fraud or dishonest conduct by the member, or from the member providing inaccurate information to FCERA or the member's employer, the Board reserves all rights to seek all amounts underpaid, plus the maximum amount of recoverable interest under law. The Board shall determine whether the member engaged in fraud or dishonest conduct, or provided FCERA or the member's employer with inaccurate information, based on all of the facts available to it.

II. Recovery of Underpayments

- 1) Underpayments by Currently Employed and Retired Members: The Board adopts the following procedures for accomplishing the recovery of underpaid contributions by members currently employed by FCERA plan sponsors and retired members:
 - a) Upon discovery of an underpayment, FCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the currently employed or retired member advising the member of the underpayment and proposing a repayment schedule, as follows:

- i. The letter will request payment to FCERA of the amount underpaid, subject to the provisions of this Policy.
 - ii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.
 - iii. The agreement to pay the amounts underpaid will provide two options:
 - Option 1 – equal installments deducted from the currently employed member's pay (in addition to the contributions otherwise required of the member), or benefit payments if the member is retired, over the same length of time that the underpayments occurred, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied for the underpayment period and the payment period. If the member's employment terminates during the payment period, the member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts FCERA owes the member (in retirement benefits or otherwise), if the member does not make a lump sum payment.
 - Option 2 – lump sum payment to FCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied during the underpayment period.
 - iv. The letter and agreement to pay underpaid amounts will provide that Option 1 will go into effect by default if a written response from the member is not received within 30 days following the date the letter was delivered.
- b) If the amount of the underpayment, not including interest, is \$5,000 or more, FCERA staff will attempt to contact the member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
 - c) FCERA may pursue all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.
 - d) FCERA will maintain a permanent record of all amounts of underpayments and the payment to FCERA of those underpayments.
- 2) Underpayments by Members No Longer Employed By a FCERA Plan Sponsor: The Board adopts the following procedures for accomplishing the recovery of underpaid contributions by members who have yet to retire but are no longer employed by a FCERA plan sponsor:
- a) Upon discovery of an underpayment, FCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the previously employed member advising the member of the underpayment and proposing a repayment schedule, as follows:

- i. The letter will request payment to FCERA of the amount underpaid, subject to the provisions of this Policy.
 - ii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.
 - iii. The agreement to pay the amounts underpaid will provide two options:
 - Option 1 – payment of equal installments to FCERA by the previously employed member over the same length of time that the underpayments occurred, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied for the underpayment period and the payment period. If the member defaults under the agreement during the payment period, the member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts FCERA owes the member (in retirement benefits or otherwise), if the member does not make a lump sum payment.
 - Option 2 – lump sum payment to FCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied during the underpayment period.
 - iv. In the event the member regains employment with any of FCERA's plan sponsors, or in the event the member attempts to establish reciprocity with FCERA after gaining employment with an agency with which FCERA establishes reciprocity, equal installments shall be deducted from the re-employed member's pay (in addition to the contributions otherwise required of the member), over the same length of time (or remaining length of time if the member had already begun making payments under an agreement with FCERA) that the underpayments occurred, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied for the underpayment period and the payment period..
- b) If the amount of the underpayment, not including interest, is \$5,000 or more, FCERA staff will attempt to contact the member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
 - c) FCERA may pursue all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.
 - d) FCERA will maintain a permanent record of all amounts of underpayments and the payment to FCERA of those underpayments.

III. Overpayments of Contributions by Members

- 1) When a member has overpaid contributions, the member shall be entitled to a prospective adjustment to his or her contributions necessary to correct the

overpayment, as well as a lump sum payment for all past overpayments, with interest at FCERA's actuarially assumed rate(s) of return throughout the applicable period of overpayment. Interest shall accrue on each overpaid amount from the date of the overpayment to the date of the lump sum corrective payment. The payment shall be made in the member's pay from their FCERA participating employer as soon as is reasonably practicable following FCERA's discovery of the overpayment.

- 2) If a member who overpaid contributions has died prior to payment of the lump sum amount due, the following procedures will be followed:

a) Member With Designated Beneficiary

- i. If the member has named a designated beneficiary, the payment will be made directly to the designated beneficiary. See CERL Section 31452.7.

b) Member Without Designated Beneficiary

- i. If there is an open estate (i.e., no order for final distribution yet), payment will be made to the estate (through the personal representative).
- ii. If final distribution of the estate has already been made, FCERA staff will review the order for final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.
- iii. If an estate was not established, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property on file with FCERA. See Prob. Code Section 13101.
- iv. FCERA staff shall make reasonable efforts to locate the person(s) entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such person, or by other means of similar intended effect. The letter shall request written confirmation that the person entitled to payment still lives at that address and will accept payment. Upon receipt of such written confirmation, the payment will be mailed to that person at that address. See CERL Section 31783.5(b).
- v. If, after taking the above steps, FCERA staff has not been able locate a person entitled to payment, FCERA shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the system's pension reserve fund. If someone later claims the funds, the Board will consider such claims on a case-by-case basis. See CERL Section 31783.5(c).

- vi. FCERA will maintain a permanent record of all amounts of outstanding refunds of overpayments and any amounts that have been transferred into the pension reserve fund.
 - vii. In cases where there is no designated beneficiary and the total amount of overpayment is less than \$50, FCERA staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to FCERA, however, will be considered regardless of size.
- 3) Overpayments of \$5 or less will only be refunded at the request of the member.

IV. Policy Review

- 1) This policy will be reviewed at least every three years.

V. Policy History

- 1) This policy was adopted by the Board on December 15, 2010.
- 2) The Board of Retirement reviewed this policy on December 16, 2015 and on July 20, 2016.

VI. Secretary's Certificate

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

July 20, 2016

Date of Action:

By: Retirement Administrator

**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)
BOARD OPERATIONS POLICY**

Purpose

- 1) This Board Operations Policy provides guidelines describing:
 - a) The appointment of Board Officers;
 - b) The establishment of board committees; and
 - c) The manner in which meetings of the Board and its committees will be conducted so as to ensure that such meetings are efficient and productive.

Definitions

- 1) The *1937 Act* shall mean The County Employees Retirement Law of 1937. (Cal Gov. Code, § 31450 et seq.)
- 2) *PEPRA* shall mean the California Public Employees' Pension Reform Act of 2013. (Cal Gov. Code § 7522 et seq.)
- 3) *The Brown Act* shall mean the Ralph M. Brown Act, (Cal Gov. Code § 54950 et. seq.), also known as the Open Meeting Laws.
- 4) The *Bylaws* shall mean FCERA's *Bylaws and Regulations of the Board of Retirement*.

Policy Guidelines

- 1) Board Officers
 - a) Annually at the last regular meeting in December, the Board shall elect one of its members as Chair, and one of its members as Vice-Chair. Board ~~officers~~ Officers shall hold office for a term of one year or until a successor is duly elected and qualified. (Bylaws § 2.1.1)
 - b) If a ~~board~~ Board officer ~~Officer~~ fails for any reason to complete his or her term, the Board shall select a successor for the balance of the unexpired term at its next regular meeting. (Bylaws §2.1.1)
 - c) Officers may be removed by a two-thirds vote of the entire Board (i.e., six board members). (Bylaws § 2.1.1)
 - d) A board member may be elected to the position of Chair for up to two consecutive terms, unless approved for additional terms by a two-thirds vote of the entire Board.
 - e) The Retirement Administrator shall serve as Secretary of the Board. (Bylaws § 2.1.3)

2) Committees of the Board

- a) The standing committees of the Board shall be as follows:
 - i. Audit Committee
 - ii. Budget Committee
 - iii. Disability Committee
 - iv. Personnel Committee
 - v. Board Consultants Evaluation Committee
- b) Annually at the first regular meeting in January, the Chair shall recommend to the Board for appointment committee Chairs, members and a committee alternate to each standing committee on an annual basis, and to each ad hoc committee as needed. In recommending committee appointments, the Chair shall seek input from the Board during board meetings and shall consider the following factors:
 - i. The need to maintain a level of continuity in committee membership;
 - ii. The need to rotate the composition of committees to provide diversified experience to board members;
 - iii. The need to ensure that, to the extent possible, board members' committee appointments reflect their areas of interest;
 - iv. The need to maintain balance between the elected and appointed members of the Board; and
 - v. The need to minimize conflicts of interest.
- c) The Board may approve the establishment of new standing and ad hoc committees in consultation with the Retirement Administrator.
- d) Standing and ad hoc committees shall be composed of at least three board members and one committee alternate or four board members with no alternate. Committee members shall be selected from among the board members and alternate board members of the Board.
- e) The primary function of committee alternates is to serve as voting committee members at committee meetings when necessary to satisfy quorum requirements, but alternates may attend any meeting of the committee as an observer.

- f) In the event that the committee chair is unable or unwilling to complete his [or her](#) term, the committee shall elect a replacement from among its members to serve for the balance of the unexpired term.
- g) The Retirement Administrator shall ensure board committees receive adequate support from staff, and shall assign a designated staff contact to each committee.
- h) The Retirement Administrator shall recommend and the Board shall adopt a charter for each standing and ad hoc committee, that provides a description of the committee's mandate, specifies a staff contact, and, in the case of ad hoc committees, contains a provision for disbanding the committee once it has fulfilled its mandate. These materials require board approval.

3) Attendance

- a) Board members shall make every reasonable effort to attend all meetings of the Board and all meetings of committees on which they serve. Should a board member be unable to attend a meeting of the Board or a committee on which they serve, the board member shall notify the Retirement Administrator as soon as possible to help ensure that a quorum will be achieved.
- b) Board members who are not members of a standing committee may attend any meeting of that standing committee, as observers. Board members who are not members of an ad hoc committee may not attend a non-public meeting of that committee, but may attend a public meeting of that committee, as observers.
- c) If the Chair is absent from a board meeting, the ~~Vice-Vice~~ Chair shall preside. If the Chair and Vice-Chair are both absent from a board meeting, the Board shall elect a Chair pro tem for the meeting. Alternate members of the Board are eligible to serve as Chair pro tem when sitting for a regular member. (Bylaws § 2.1.2).
- d) If a committee chair is unavailable to attend a meeting, then he shall designate another member of the committee to serve as committee chair in his [or her](#) absence in writing via memo or email. If the committee chair is unable to do so, the remaining committee members may appoint a pro tem committee chair from among themselves for the meeting.
- e) The Retirement Administrator shall provide a report to the Board annually, and more often if requested by the Board or a committee, of attendance at meetings. (Bylaws § 2.2.3)

4) Scheduling of Meetings

- a) Regular meetings of the Board shall be held on the first and third Wednesdays of each month at 8:30 a.m. Meetings shall generally be held in the Board room of the FCERA offices. (Bylaws § 2.6.1).
- b) Special meetings of the Board may be called at any time by the Chair or by a majority of the members of the Board only as provided in the Brown Act (Bylaws § 2.6.2.a).
- c) Emergency meetings of the Board may be called by the Chair, the Administrator, or by a majority of the members of the Board only as provided in the Brown Act (Bylaws § 2.6.2.b).
- d) At its first meeting each year, each standing committee may establish a schedule of meetings for the balance of the year, unless it expects to meet on an irregular basis. The committee chair, in consultation with the Retirement Administrator, may cancel or reschedule a meeting, if it is apparent that there will not be a quorum or it is deemed that there are insufficient issues to warrant a meeting. Attempts will be made to provide all committee members at least one week's notice of cancellation of any meeting.

5) Agenda

- a) The agenda shall be posted in accordance with the provisions of The Brown Act. Accordingly, the Secretary to the Board shall prepare and post a written agenda for all regular meetings of the Board, at least 72 hours in advance of the subject meeting. Agendas for special board meetings and committee meetings shall be prepared and posted at least 24 hours in advance of the subject meeting.
- b) The agenda and materials for board and standing and ad hoc committee meetings shall generally be distributed to board members at least 72 hours in advance of the subject meeting. Said materials shall also be made available to members of the public in accordance with The Brown Act.
- c) Items may be placed on the board or committee meeting agenda, prior to the agenda being posted, by any of the following means:
 - i. By action of the Board or committee at a previous meeting;
 - ii. By the Board or committee chair;
 - iii. By the Retirement Administrator; or

- iv. At the request of a board member, a plan member or any other party, with the approval of the Board, Board Chair, appropriate committee chair, or the Retirement Administrator.
 - d) Once posted, items may be added to a board or committee meeting agenda only in accordance with The Brown Act.
 - e) As more particularly stated in the Brown Act, no action or discussion shall generally be undertaken on any item not appearing on a meeting agenda, except that members of the Board or the committee, as the case may be, or its staff may:
 - i. Briefly respond to statements made or questions posed by members of the public during Public Comment;
 - ii. Ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities;
 - iii. Provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda. (The Brown Act, Cal Gov. Code § 54954.2. (a))
- 6) Public Comment
- a) As more particularly stated in The Brown Act:
 - i. Every agenda for regular board or standing committee meetings shall provide an opportunity for members of the public to directly address the Board or committee on any item of interest to the public, before or during the body's consideration of the item, that is within the subject matter jurisdiction of the body, provided that no action shall be taken on any item not appearing on the agenda (unless the action is otherwise authorized by subdivision (b) of Cal Gov. Code § 54954.2 of The Brown Act.)
 - ii. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.
 - b) As more particularly stated in the Brown Act, with respect to any item that is already on the agenda, the public will be given the opportunity to comment before or during the Board or committee's hearing of the item. When a member of the public raises an issue not yet before the Board or committee, the Board may engage in limited discussion of the item, but no action shall be taken on the item (unless the action is otherwise authorized by subdivision (b) of Cal Gov. Code § 54954.2).

- c) At the discretion of the presiding officer, the duration of any address by a member of the public may be limited to five minutes.
- d) Members of the public shall be encouraged to inform FCERA in advance of their intention to address the Board or a committee of the Board at a public meeting, so that FCERA may set or modify the agenda to best accommodate the public.
- e) If the Board or a committee expects that a number of public members may wish to address the Board on a particular matter at an upcoming meeting, it may call a special meeting devoted strictly to public comment if it believes that a special meeting may be more convenient or effective for the Board and the public.
- f) In the event that more than one member of the public wishes to address the Board or a committee on an issue, the Board or committee will generally allow all such members to speak consecutively before addressing any of them.
- g) Notwithstanding the immediately preceding paragraph, the Board will generally refrain from immediately responding to or taking action on comments from the public, but will instead, where appropriate, direct staff or advisors to consider the comments and provide the Board or committee with recommendations at a subsequent meeting.

7) Rules of Order

- a) Except as otherwise provided in this policy, the By-laws and Regulations of the Board of Retirement, or The Brown Act, Robert's Rules of Order (most recent edition) shall guide the Board in its proceedings. (Bylaws § 2.4)
- b) The order of business shall be set in the Chair's discretion, unless otherwise directed by the majority of the Board. (Bylaws § 2.4)

8) Quorum and Voting

- a) The Board can have up to two alternate members, one elected by the safety members and one elected by the retired members. For purposes of this policy, "voting members" include any alternate member who is serving in the absence of another board member, in accordance with the 1937 Act.
- b) Five voting members of the Board shall constitute a quorum for board meetings. (Bylaws § 2.3).
- c) A majority vote of the quorum present at the time of voting shall govern the decisions of the Board, unless otherwise specifically provided for in the 1937 Act, other applicable law, or the Bylaws. (Bylaws § 2.3)

- d) The Chair shall have a vote on all questions and shall not be required to relinquish the officer position in order to participate in discussion (Bylaws § 2.1.4).
- e) A majority of voting members shall constitute a quorum for committee meetings.
- ~~f) All formal actions taken by a committee must be approved by the Board at a scheduled board meeting, unless the committee's charter specifically authorizes independent action by the committee.~~

~~g) Motion to reconsider a board action may only be brought by a board member who voted on the prevailing side when the matter was first considered by the Board. The request for reconsideration of previous board action must include in detail any information not previously considered. The motion may be seconded by any board member.~~

9) Reconsideration

Formatted: Heading 2

- a) When the Board has adopted a resolution making determinations or has taken action on any item brought before it for determination, any person, including a Board member, or affected agency may file a written request with the Retirement Administrator requesting amendments to or reconsideration of the resolution or Board determination. The request shall state the specific modification to the resolution or determination being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. Any request that, on its face, fails to state new or different facts that could not have been presented previously shall not be deemed to be a complete request.
- b) The person or agency shall file the written request with the Retirement Administrator or his or her designee no later than thirty (30) days of the date of Board action. If no person or agency files a timely and complete request, the Board shall not take any action pursuant to this section.
- c) Upon receipt of a timely and complete request by the Retirement Administrator, the time to file any action, including, but not limited to, an action pursuant to any provisions governing the time within which the Board is to act, shall be tolled for the time that the Board takes to act on the request.
- d) The Retirement Administrator shall place the timely and complete request on the agenda of the next meeting of the Board for which notice can be given. The Retirement Administrator shall give notice of the consideration of the request by the Board in the same manner as for the original proposal. The Retirement Administrator may give notice in any other manner as he or she deems necessary or desirable so long as such notice complies with Board policy and state law.

- e) At that meeting, the Board shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed thirty-five (35) days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the Board.
- f) At the conclusion of its consideration, the Board may approve or disapprove the request. If the Board disapproves the request, it shall not adopt a new resolution making determinations or take any action to alter its original determination. If the Board approves the request, the Board shall adopt a resolution or action, as appropriate, making determinations that shall supersede the resolution previously issued or determination previously made.
- g) The determinations of the Board shall be final and conclusive. No person or agency shall make any further request for the same matter or a substantially similar matter, as determined by the Board.
- h) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected without further action by the Board.

9)10) Minutes and Records

- a) The Secretary to the Board shall cause to be recorded in the minutes of board meetings the following:
 - i. The time and place of each meeting of the Board;
 - ii. The names of board members present;
 - iii. The names of staff present, and any service providers present, and the firm they represent;
 - iv. The time at which a board member arrived or left the meeting after its commencement or prior to its conclusion; and
 - v. All official acts of the Board, together with the votes thereon, except for action that is unanimous; and when requested, a member's dissent or approval with his or her reasons. (Bylaws § 2.5.1)
 - vi. Minutes of closed sessions, when appropriate under the Brown Act, Cal Gov. Code § 54957.2.
- b) The Secretary shall cause the board minutes to be written and presented for approval no later than the second succeeding regular meeting. The minutes or a true copy thereof submitted and signed by the Secretary after approval by the Board shall form part of the permanent records of the Board. (Bylaws § 2.5.1)

- c) Minutes of committee meetings shall be similarly prepared by the committee's staff contact, and presented for approval at the next committee meeting. The minutes or a true copy thereof submitted and signed by the Secretary after approval by the committee shall form part of the permanent records of the Board.
- d) Both board and committee minutes shall focus on describing any actions that occurred, and shall provide sufficient detail to evidence the Board's deliberations in the matter.
- e) Staff will provide the Board with a regular report that enables the Board to track, from meeting to meeting, the status of prior Board directions to staff.

Policy Review

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

Policy History

- 1) This policy was adopted by the Board on April 4, 2007.
- 2) The Board of Retirement reviewed and modified this policy on September 19, 2007, August 4, 2010, ~~and~~ December 16, 2015, and July 20, 2016.

Secretary's Certificate

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

[Date]

Date of Action:

[insert signature]

By: Retirement Administrator

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)
POLICIES AND PROCEDURES GOVERNING THE OVERPAYMENT OR UNDERPAYMENT OF
MEMBER CONTRIBUTIONS

The Board of Retirement ("Board") has a fiduciary obligation to conserve retirement fund assets and protect the integrity of the fund, for the benefit of the members and beneficiaries of the Fresno County Employees' Retirement Association ("FCERA").

The Board determines the required member contributions in accordance with law and in consultation with its actuary. Subject to all applicable laws, it shall be FCERA's policy to make every reasonable effort to recover from a member the amount of any underpayment of contributions, and to remit to a member the amount of any overpayment of contributions, consistent with this policy and the procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of member contributions, and within a reasonable period of time after written notification to the affected member, FCERA will correct any overpayment or underpayment of member contributions.

These policies and procedures are designed for use when errors affect an individual member's contributions. In the event of a system-wide error that affects multiple members' contributions, the Board may implement a system-wide correction process that it determines is appropriate under all the circumstances.

In the event of any inconsistency between applicable law and these Policies and Procedures, the law shall take precedence.

I. Underpayment of Contributions by Members

- 1) Whenever an underpayment of contributions is discovered, FCERA shall make a prospective adjustment to the member's contributions and take all reasonable steps to recover the full amount of all past underpayments, with "appropriate interest," subject to the provisions of this policy and applicable law. If the underpayment was due to fraud or dishonest conduct by the member, or to the member providing inaccurate information to FCERA or the member's employer, appropriate interest shall be FCERA's actuarially assumed rate of return that was applicable for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid. If the underpayment was the result of an error by FCERA or the member's employer, appropriate interest shall be 3% per annum for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid.
- 2) FCERA will recover underpayments either by (a) a lump sum payment from the member, (b) additional amounts added to the member's future contributions, over a period of time as determined by the Board, or (c) pre-tax offsets to future benefit payments to the member, over a period of time as determined by the Board, unless the Board, in its

discretion and because of legal or practical considerations, determines that another process is warranted.

- 3) The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of underpayments only where the cumulative total amount underpaid by the member is \$50 or more. Accordingly, the Administrator is authorized to not seek recovery of any underpayments where the total amount underpaid by the member is less than \$50.
- 4) The Administrator shall have authority, on the advice of legal counsel, to compromise recovery of underpayments when the total amount of underpayment, not including interest, is less than \$5,000. Only the Board may compromise claims in which the total amount of underpayment, not including interest, is \$5,000 or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the Administrator and/or the Board when determining whether to compromise a claim. Compromising claims may include a different method of repayment than is otherwise provided by this policy and/or a partial forgiveness of the amounts underpaid.
- 5) In cases where there is no evidence that the underpayment resulted from the fraud or dishonest conduct by the member, or from the member providing inaccurate information to FCERA or the member's employer, FCERA will only seek recovery of amounts underpaid by the member for the three years immediately before the error was corrected. Considering all relevant factors (including collection issues and principles of equity), the Board finds that seeking only three years of underpayments under those circumstances constitutes "reasonable steps" to recover the full amount of the underpayments. In cases where there is evidence that the underpayment resulted from fraud or dishonest conduct by the member, or from the member providing inaccurate information to FCERA or the member's employer, the Board reserves all rights to seek all amounts underpaid, plus the maximum amount of recoverable interest under law. The Board shall determine whether the member engaged in fraud or dishonest conduct, or provided FCERA or the member's employer with inaccurate information, based on all of the facts available to it.

II. Recovery of Underpayments

6)1) Underpayments by Currently Employed and Retired Members: The Board adopts the following procedures for accomplishing the recovery of underpaid contributions by members currently employed by FCERA plan sponsors and retired members:

- a) Upon discovery of an underpayment, FCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the currently employed or retired member advising the member of the underpayment and proposing a repayment schedule, as follows:

Formatted: Heading 1

Formatted: Underline

Formatted: Underline

Formatted: Underline

FCERA

Overpayment or Underpayment of Member Contributions

- i. The letter will request payment to FCERA of the amount underpaid, subject to the provisions of this Policy.
 - ii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.
 - iii. The agreement to pay the amounts underpaid will provide two options:
 - Option 1 – equal installments deducted from the currently employed member's pay (in addition to the contributions otherwise required of the member), or benefit payments (if the member is retired), over the same length of time that the underpayments occurred, with appropriate interest (as that phrase is defined in Section I, subsection (1) No. 1 above) applied for the underpayment period and the payment period. If the member's employment terminates during the payment period, the member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts FCERA owes the member (in retirement benefits or otherwise), if the member does not make a lump sum payment.
 - Option 2 – lump sum payment to FCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in Section I, subsection (1) No. 1 above) applied during the underpayment period.
 - iv. The letter and agreement to pay underpaid amounts will provide that Option 1 will go into effect by default if a written response from the member is not received within 30 days following the date the letter was delivered.
- b) If the amount of the underpayment, not including interest, is \$5,000 or more, FCERA staff will attempt to contact the member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
 - c) FCERA may pursue all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.
 - d) FCERA will maintain a permanent record of all amounts of underpayments and the payment to FCERA of those underpayments.

2) Underpayments by Members No Longer Employed By a FCERA Plan Sponsor: The Board adopts the following procedures for accomplishing the recovery of underpaid contributions by members who have yet to retire but are no longer employed by a FCERA plan sponsor:

- a) Upon discovery of an underpayment, FCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the previously employed member advising the member of the underpayment and proposing a repayment schedule, as follows:

Formatted: Underline

FCERA

Overpayment or Underpayment of Member Contributions

- i. The letter will request payment to FCERA of the amount underpaid, subject to the provisions of this Policy.
- ii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.
- iii. The agreement to pay the amounts underpaid will provide two options:
 - Option 1 – payment of equal installments to FCERA by the previously employed member over the same length of time that the underpayments occurred, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied for the underpayment period and the payment period. If the member defaults under the agreement during the payment period, the member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts FCERA owes the member (in retirement benefits or otherwise), if the member does not make a lump sum payment.
 - Option 2 – lump sum payment to FCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied during the underpayment period.
- iv. In the event the member regains employment with any of FCERA's plan sponsors, or in the event the member attempts to establish reciprocity with FCERA after gaining employment with an agency with which FCERA establishes reciprocity, equal installments shall be deducted from the re-employed member's pay (in addition to the contributions otherwise required of the member), over the same length of time (or remaining length of time if the member had already begun making payments under an agreement with FCERA) that the underpayments occurred, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied for the underpayment period and the payment period..
- b) If the amount of the underpayment, not including interest, is \$5,000 or more, FCERA staff will attempt to contact the member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
- c) FCERA may pursue all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.
- d) FCERA will maintain a permanent record of all amounts of underpayments and the payment to FCERA of those underpayments.

Formatted: Heading 3

IV. Overpayments of Contributions by Members

- 1) When a member has overpaid contributions, the member shall be entitled to a prospective adjustment to his or her contributions necessary to correct the

overpayment, as well as a lump sum payment for all past overpayments, with interest at FCERA's actuarially assumed rate(s) of return throughout the applicable period of overpayment. Interest shall accrue on each overpaid amount from the date of the overpayment to the date of the lump sum corrective payment. The payment shall be made in the member's pay from their FCERA participating employer as soon as is reasonably practicable following FCERA's discovery of the overpayment.

2) If a member who overpaid contributions has died prior to payment of the lump sum amount due, the following procedures will be followed:

a) Member With Designated Beneficiary

- i. If the member has named a designated beneficiary, the payment will be made directly to the designated beneficiary. See CERL Section 31452.7.

b) Member Without Designated Beneficiary

- i. If there is an open estate (i.e., no order for final distribution yet), payment will be made to the estate (through the personal representative).
- ii. If final distribution of the estate has already been made, FCERA staff will review the order for final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.
- iii. If an estate was not established, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property on file with FCERA. See Prob. Code Section 13101.
- iv. FCERA staff shall make reasonable efforts to locate the person(s) entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such person, or by other means of similar intended effect. The letter shall request written confirmation that the person entitled to payment still lives at that address and will accept payment. Upon receipt of such written confirmation, the payment will be mailed to that person at that address. See CERL Section 31783.5(b).
- v. If, after taking the above steps, FCERA staff has not been able locate a person entitled to payment, FCERA shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the system's pension reserve fund. If someone later claims the funds, the Board will consider such claims on a case-by-case basis. See CERL Section 31783.5(c).

FCERA

Overpayment or Underpayment of Member Contributions

vi. FCERA will maintain a permanent record of all amounts of outstanding refunds of overpayments and any amounts that have been transferred into the pension reserve fund.

vii. In cases where there is no designated beneficiary and the total amount of overpayment is less than \$50, FCERA staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to FCERA, however, will be considered regardless of size.

3) Overpayments of \$5 or less will only be refunded at the request of the member.

~~III.~~ IV. Policy Review

1) This policy will be ~~reviewed~~reviewed at least every three years.

~~IV.~~ V. Policy History

1) This policy was adopted by the Board on December 15, 2010.

2) The Board of Retirement reviewed this policy on December 16, 2015 and on July 20, 2016.

~~V.~~ VI. Secretary's Certificate

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

[Date]

Date of Action:

[insert signature]

By: Retirement Administrator

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)
POLICIES AND PROCEDURES GOVERNING THE UNDERPAYMENT OF RETIREMENT BENEFITS

The Board of Retirement ("Board") has a fiduciary obligation to the retirement fund to conserve fund assets and protect the integrity of the fund, for the benefit of the members and beneficiaries ("Members") of the Fresno County Employees' Retirement Association ("FCERA").

Members have a right to accurate pension benefit payments. Except as determined by a court of law or this Board pursuant to this policy, no Member has the right to receive or retain retirement benefit payments that exceed the amounts to which a Member is entitled, and no Member should be deprived of any benefit payments that he or she is entitled to receive. Subject to all applicable laws, it shall be FCERA's policy to make every reasonable effort to recover from a Member the amount of any overpayment of benefits, and to remit to a Member the amount of any underpayment of benefits, consistent with this policy and the procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of benefits, and within a reasonable period of time after written notification to the affected Member, FCERA will either collect a lump sum repayment from the member or it will adjust future benefit payments to the Member to reflect the correct total amount to which the Member is entitled, as indicated below.

These policies and procedures are designed for use when calculation and other errors affect an individual member's retirement benefits. In the event of a system-wide error that affects multiple members' benefits, the Board may implement a system-wide correction process that it determines is appropriate under all the circumstances.

In the event of any inconsistency between applicable law and these Policies and Procedures, the law shall take precedence.

I. Overpayments To Members

- 1) FCERA shall take all reasonable steps to recover the full amount of all overpayments, with "appropriate interest," subject to the provisions of this policy and applicable law. If the overpayment was due to inaccurate information provided to FCERA by the member, appropriate interest shall be FCERA's actuarially assumed rate of return that was applicable during the period in which the overpayments were made, running until such amounts are fully repaid. If the overpayment was the result of an error by FCERA or the member's employer, appropriate interest shall be 3% per annum during the period in which the overpayments were made, running until such amounts are fully repaid.
- 2) FCERA will recover overpayments either by a lump sum payment from the Member or by offsetting the amount to be recovered against future benefits, over a period of time as determined by the Board, unless the Board, in its discretion and because of legal or practical considerations, determines that another process is warranted.

- 3) The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpayments only where the cumulative total amount overpaid to the Member is \$50 or more. Accordingly, the Administrator is authorized to not seek recovery of any overpayments where the total amount overpaid to the Member less than \$50.
- 4) The Administrator shall have authority, on the advice of legal counsel, to compromise recovery of overpayments when the total amount of overpayment, not including interest, is less than \$5,000. Only the Board may compromise claims in which the total amount of overpayment, not including interest, is \$5,000 or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the Administrator and/or the Board when determining whether to compromise a claim. Compromising claims may include a different method of repayment than is otherwise provided by this policy and/or a partial forgiveness of the amounts overpaid.
- 5) In cases where there is no evidence that the overpayment resulted from the fraud or dishonest conduct by the member, FCERA will only seek recovery of amounts paid to the member for the three years immediately before the error was corrected. Considering all relevant factors (including collection issues and principles of equity), the Board finds that seeking only three years of overpayments under those circumstances constitutes “reasonable steps” to recover the full amount of the overpayments. In cases where there is evidence that the overpayment resulted from fraud or dishonest conduct by the member, the Board reserves all rights to seek all amounts overpaid, plus the maximum amount of recoverable interest under law. See CERL § 31539. The Board shall determine whether the member engaged in fraud or dishonest conduct based on all of the facts available to it.
- 6) The Board adopts the following procedures for accomplishing the recovery of overpaid benefits:
 - a) Upon discovery of an overpayment, FCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the Member advising the Member of the overpayment and proposing a repayment schedule, as follows:
 - i. The letter will request payment to FCERA of the amount overpaid, subject the provisions of this Policy.
 - ii. The letter will include an agreement to repay excess benefits and a consent form for the spouse or beneficiaries, if applicable.
 - iii. The agreement to repay excess benefits will provide three options:
 - Option 1 – equal installments over the same length of time that the overpayments occurred, with appropriate interest (as that phrase is defined

in No. 1 above) applied during the overpayment period and during the repayment period.

- Option 2 – lump sum payment to FCERA for the full amount overpaid, with appropriate interest (as that phrase is defined in No. 1 above) applied during the overpayment period.
- Option 3 – reduction of monthly benefit to zero until the overpayment is paid in full, with appropriate interest (as that phrase is defined in No. 1 above) applied during the overpayment period and during the repayment period.

- iv. The letter and agreement to repay excess benefits will provide that Option 3 will go into effect by default if a written response from the Member is not received within 30 days following the date the letter was delivered.
- b) If the amount of the overpayment, not including interest, is \$5,000 or more, FCERA staff will attempt to contact the Member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
- c) FCERA may pursue all legal remedies to collect overpayments, including making a claim on an estate or trust, if appropriate.
- d) FCERA will maintain a permanent record of all amounts of overpayments and the repayment to FCERA of those overpayments.

II. Underpayments To Members

- 1) When FCERA has underpaid benefits, the Member shall be entitled to a prospective adjustment to his or her retirement benefits necessary to correct the underpayment, as well as a lump sum payment for all past underpayments, with interest at FCERA's actuarially assumed rate(s) of return throughout the applicable period of underpayment. Interest shall accrue on each underpayment amount from the date of the underpayment to the date of the lump sum corrective payment. The payment shall be made as soon as is reasonably practicable following FCERA's discovery of the underpayment.
- 2) If a Member who was underpaid benefits has died prior to payment of the lump sum amount due, the following procedures will be followed:
 - a) Member With Designated Beneficiary
 - i. If the Member has named a designated beneficiary, the payment will be made directly to the designated beneficiary. See CERL Section 31452.7.
 - b) Member Without Designated Beneficiary

- i. If there is an open estate (i.e., no order for final distribution yet), payment will be made to the estate (through the personal representative).
 - ii. If final distribution of the estate has already been made, FCERA staff will review the order for final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.
 - iii. If an estate was not established, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property on file with FCERA. See Prob. Code Section 13101.
 - iv. FCERA staff shall make reasonable efforts to locate the person(s) entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such person, or by other means of similar intended effect. The letter shall request written confirmation that the person entitled to payment still lives at that address and will accept payment. Upon receipt of such written confirmation, the payment will be mailed to that person at that address. See CERL Section 31783.5(b).
 - v. If, after taking the above steps, FCERA staff has not been able locate a person entitled to payment, FCERA shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the system's pension reserve fund. If someone later appears to claim the funds, the Board will consider such claims on a case-by-case basis. See CERL Section 31783.5(c).
 - vi. FCERA will maintain a permanent record of all amounts of outstanding refunds of underpayments and any amounts that have been transferred into the pension reserve fund.
 - vii. In cases where there is no designated beneficiary and the total amount of underpayment is less than \$50, FCERA staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to FCERA, however, will be considered regardless of size.
- 3) Underpayments of \$5 or less will only be refunded at the request of the member.

III. Policy Review

- 1) The Board shall review this policy at least every 3 years to ensure that it remains relevant and appropriate.

IV. Policy History

- 1) This policy was adopted by the Board on September 3, 2003.

- 2) The Board of Retirement reviewed this policy on December 16, 2015.
- 3) The Board of Retirement reviewed this policy on July 20, 2016.

V. Secretary's Certificate

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

July 20, 2016

Date of Action:

By: Retirement Administrator
