

June 21, 2013

TO: Each Member, Board of Retirement

FROM: JJ Popowich, Assistant Executive Officer 

FOR: July 11, 2013

SUBJECT: **Optional Membership: Approve Acceptable Employer Payroll Records Policy for Service Credit Purchases**

RECOMMENDATION

Recommend the Board of Retirement approve the Acceptable Employer Records Policy for the purchase of County service credit.

INTRODUCTION

At the May 9, 2013, Board of Retirement Administrative meeting several LACERA members addressed the Board in the Public Comments section regarding their frustration with delays in processing their Optional Membership requests. The members in attendance are long standing employees with the Department of Public Works that began their career as temporary employees under the Comprehensive Employment and Training Act of 1973 (CETA). Your Board directed staff to return with a report and recommendations for resolving their concerns.

Despite appearances this is not an Optional Membership issue. The rules surrounding Optional Membership are clearly outlined by the Board of Retirement's Bylaws. (Please see the attachment "Optional Membership & CETA In a Nutshell" for more information about these two issues). The barrier to resolving these requests has been the determination of acceptable documentation of the employee's work history. In a majority of these cases LACERA has been unable to locate payroll records showing the days each member worked which is essential to determining their eligibility for Optional Membership. In an effort to gain eligibility, some members have provided LACERA with other documentation ranging from letters from former retired supervisors to unsigned time cards to show that they were working during this period.

Currently LACERA does not have a policy outlining what acceptable employer records would be for validating a member's eligibility to purchase previous service, or for use in determining the cost of the previous service. This policy will set parameters for what LACERA will consider to be acceptable employer records which will help staff review and resolve the member's requests.

BACKGROUND

LACERA staff has struggled over the years to validate a member's eligibility for Optional Membership based on the lack of detailed payroll records. While the specific trigger for our discussion today is the Optional Membership requests of these members, the same type of issues can surface for other members who request to purchase temporary time or previous service with the County. These other situations do not occur as often because the type of information needed to allow these other purchases varies, but they can and do occur. Sometimes the records simply are not available to validate their claim to the service. When we cannot locate records we have denied requests due to the lack of records.

Many of these members and some of their departments have provided other documents for consideration that may provide us with the data we need. A number of members have submitted notarized letters from their former supervisors stating they worked Monday – Friday, (M-F) 8 hours a day. Some supervisors confirmed a member did not miss any scheduled time during a specific year. We have also been provided a letter from the Department of Public Works (one of the departments that generally employed CETA employees at that time) providing us with a signed affidavit from the Assistant Deputy Road Commissioner from 1975-1978, stating that CETA employees were assigned the 5/40 schedule, M-F.

In each case the problem with all of these documents is they do not meet a standard of being an official record of the employer. Even the letter provided by the Department of Public Works with the affidavits of former supervisors only confirms that these supervisors were former department employees. They do not confirm or deny any of the data enclosed in the letter. In addition, the letters provided are only general schedule confirmations and not specific to any particular member.

VERIFYING MEMBERS EMPLOYMENT AND EARNINGS HISTORY

LACERA relies on County provided payroll data to determine a member's work and earnings history. Ideally the data is transmitted to LACERA electronically (currently through the EHR system and previously via CWTAPPS). This data is then merged into LACERA's membership records. Staff references this data to determine employment and earnings histories. Based on this data LACERA can determine if a member is eligible to purchase County service such as previous service, temporary service, or qualify for Optional Membership.

For members employed prior to 1990's, LACERA relies on County payroll records that were kept on microfiche. LACERA obtained these microfiche records from the County when the County converted to a computerized payroll system many years ago. The County has had a number of different types of payroll records. Each type shows different sets of information. Some records show the date of hire and termination. Some

show date of hire, termination, scheduled salary, hours worked, and contribution rates. Still other records show a history of the payroll items that you worked under. The chart below shows the types of records available.

	Type	Listing	Employment History	Time Period	Notes
1.	Central Personnel Employee History (Orange Banded)	Alphabetically by last name	Hire date; salary; termination date; employee number	1920 to 1977	
2.	Central Personnel Attendance Record (Orange Banded)	By 6 digit employee number	Time worked and time absent	1920 to 1977	
3.	Employee Sequence Payroll Register	By 6 digit employee number	Payroll data. job item; hire date; termination date; scheduled and actual earnings; hours worked; contr. rate and plan	12/31/77 to present	Beginning with 1/1/83, payroll sequence is divided into two accrual periods, the 15 th and 30 th of each month.
4.	Timekeeping Integrated Personal Payroll System (T.I.P.P.S.)	Alphabetically by last name	Compilation of employment history	As of 12/86 and 12/89	
5.	Member Deposit Reserve Ledger – CERS (County Employee Retirement System)	By 6 digit employee number and alphabetically by last name	Contr. rate and all contr. and interest earned during membership. Also, withdrawal info	1/1/38 to 3/31/90 – conversion	CERS records are divided into several filing systems from 1/1/38 to 3/31/90.

In all cases, the data provided comes directly from the County to LACERA. There is no member involvement and no question as to the provenance of the data provided. Relying on employer provided data allows LACERA to accurately determine a member's work and earnings history and ensures that we are exercising our fiduciary duty to pay the member an accurate benefit based on verifiable data.

As we have discussed the problem with these Optional Membership cases is that the member's records cannot be located. Given the lack of records, members have requested that we consider alternate forms of records such as statements from former department personnel, unsigned time cards, etc. Some of these alternate documents such as the unsigned time cards appear to be County records. This places staff in a difficult position of having to reject documents that in a member's eyes appear to be valid.

PROPOSED ACCEPTABLE EMPLOYER PAYROLL RECORDS POLICY FOR SERVICE COUNTY CREDIT PURCHASES

Given that LACERA has a fiduciary duty to ensure that we are paying a member only the promised benefit that they have earned we feel that it is prudent to set a clear policy on what documentation LACERA will accept as verification of employment, work, and earnings histories. Therefore we propose the following policy:

LACERA will accept the following records for review to determine and verify eligibility and for cost calculation purposes for all County previous service, optional membership, and temporary time purchases:

- A. Employer payroll and work history records submitted to LACERA directly by the employer electronically through the current County payroll system, or County payroll system in place at the time the service was accrued, which includes the relevant information for the type of service being purchased, or
- B. Employer payroll and work history submitted to LACERA by the employer in the form of microfiche, photocopy, hard copy or fax which includes the relevant information for the type of service being purchased, or
- C. Employer affidavits attesting to the work history and/or payroll history submitted to LACERA directly by a current official representative of the employer authorized to provide this information via hard copy or fax, which includes the relevant information for the type of service being purchased

LACERA cannot accept any records provided by a member that has not been certified as a true and accurate representation of the member's payroll or work history by the County Auditor Controller, Human Resources, or Department the member worked for.

OUTREACH PLAN FOR MEMBERS PENDING AN OPTIONAL MEMBERSHIP DECISION

Subsequent to the Board of Retirement's approval of the proposed recommendation LACERA will notify the members who have pending Optional Membership requests that we do not have the necessary records on file to validate their eligibility. We will provide members with the "Acceptable Employer Payroll Records Policy for Service Credit Purchases" and refer the member to their department for assistance with providing the necessary documentation.

REVIEWED AND APPROVED



Gregg Rademacher
Chief Executive Officer

Attachment

JJP:jjp

LACERA POLICY STATEMENT**Acceptable Employer Payroll Records Policy for County Service
Credit Purchases****(Effective July 11, 2013)****Purpose**

LACERA members may purchase certain types of County service such as previous service, temporary service, and may qualify to purchase service prior to membership to qualify for optional membership. The eligibility to purchase service, as well as the amount of service that can be purchased, and the cost of the service is based on employer payroll and employment records. LACERA has a fiduciary duty to ensure that any benefit paid to the member is based on verifiable employment records in order to pay the promised benefit under the plan design and the Board of Retirement Bylaws.

LACERA's Board of Retirement hereby establishes the Acceptable Employer Payroll Records Policy for Service Credit Purchases. This policy will provide guidance to staff members in reviewing and determining a member's eligibility for, and cost of purchasing County service credit.

I. Statement of Policy

LACERA will accept the following records for review to determine and verify eligibility and for cost calculation purposes for all County previous service, optional membership, and temporary time purchases:

- A. Employer payroll and work history records submitted to LACERA directly by the employer electronically through the current County payroll system, or County payroll system in place at the time the service was accrued, which includes the relevant information for the type of service being purchased, or
- B. Employer payroll and work history submitted to LACERA by the employer in the form of microfiche, photocopy, hard copy or fax which includes the relevant information for the type of service being purchased, or
- C. Employer affidavits attesting to the work history and/or payroll history submitted to LACERA directly by a current official representative of the employer authorized to provide this information via hard copy or fax, which includes the relevant information for the type of service being purchased

LACERA cannot accept any records provided by a member that has not been certified as a true and accurate representation of the member's payroll or work

history by the County Auditor Controller, Human Resources, or Department the member worked for.

II. Implementation

This policy is established pursuant to the Board of Retirement's fiduciary responsibility to administer the retirement plan in accordance with the County Employees Retirement Law of 1937 and the Board of Retirement Bylaws. This policy may be modified in the future by Board of Retirement action.

Adopted:

ATTACHMENT 1**Optional Membership & CETA in a Nutshell**

The trigger for today's discussion on acceptable employer records is the request for assistance with the Optional Membership requests. We felt it would be beneficial to provide your Board with some background information on Optional Membership. Likewise, since many of the members who approached the Board were originally hired under the CETA program, we felt it would be beneficial to provide a quick primer on that program and its relationship to the Optional Membership issues.

WHAT IS OPTIONAL MEMBERSHIP?

Members prior to 1978 were allowed to make an application to the Board of Retirement to establish Optional Membership if they met specific requirements outlined in the Board of Retirement Bylaws:

"2. OPTIONAL MEMBERSHIP

Any Temporary, Seasonal, Intermittent, or Part-Time employee who works 180 days or more, or the equivalent thereof, in a calendar year, including vacation or sick leave for which he or she receives compensation, and excluding Saturdays, Sundays, and holidays whether paid for or not, may elect to become a member of the Los Angeles County Employees Retirement Association by filing a written notice of his or her election with the Board of Retirement on or before March 31 of the next succeeding calendar year, and will thereafter be known as an optional member.

Irrespective of his or her duties, such an employee may not elect to become and he or she shall not become a safety member. Such an employee shall become a general member on the first day of the calendar month next succeeding the month during which he or she files his or her election, and shall remain a member thereafter providing the period between his or her employments does not exceed one calendar year.

This section shall be inoperative on and after December 31, 1978.

Notwithstanding any other provision in these Bylaws, all employees of the County of Los Angeles who are classified as Beach Lifeguard I, Recurrent and who have worked 180 or more days in calendar year 1978, shall be entitled to optional membership provided that they elect such optional membership by September 30, 1979."

The Bylaw regarding Optional Membership includes a sunset clause making the section of the Bylaw inoperative on or after December 31, 1978. However, LACERA has

historically agreed to review member requests after that date with the understanding that the Optional Membership rule was originally published in the Annual Report. The Annual Reports at the time were not distributed to temporary employees and we realize there was no concerted effort by LACERA or the County to notify these new members of the ability to apply for Optional Membership.

We have a standardized review process which includes procedures to ensure that there is no evidence that a member was notified of their eligibility to apply before. If no evidence exists of the prior notification then we will allow them one chance to 'rectify' the lack of timely notice.

WHAT ARE THE IMPACTS OF OPTIONAL MEMBERSHIP?

A member who has been granted Optional Membership has their membership date moved back to the first of the month following the month in which they met the required 180 days in that calendar year. This often means that a member qualifies for an earlier plan.

Example: An employee is hired in January of 1976 on a monthly temporary item working for the Department of Public Works Road Maintenance. The member continuously works until he is hired in a permanent capacity in and becomes a LACERA member on December 1, 1977, under Plan B General. During 1976, the member works a 5/40 schedule, Monday – Friday. In August of 1976, because he has a good attendance record, he meets the minimum 180 day requirement and qualifies for Optional Membership. He applies and is granted Optional Membership moving his membership date back to September 1, 1976, placing the member in Plan A.

Potential LACERA Impacts	Potential Member Impacts
<p>Granting a member Optional Membership has a number of impacts on LACERA:</p> <ol style="list-style-type: none"> 1. The member may be placed in an earlier plan. This could cause an unfunded liability as the employer contributions for this member would not have been paid. 2. Members who have made 	<p>The change in membership date has a number of potential beneficial impacts to the member.</p> <ol style="list-style-type: none"> 1. A change in membership date could place the member in an earlier plan. 2. The change in membership date could mean that the member now has an earlier entry age and therefore his/her contributions would be lower.

<p>purchases throughout their career would have to have those purchases re-calculated based on the earlier plan or entry age.</p>	<p>3. The changes in the entry age and contributions may create excess funds as a result of the difference between the contribution rates.</p>
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WHAT ARE THE ISSUES SURROUNDING CETA MEMBERS?

The Comprehensive Employment and Training Act of 1973 (CETA) was a federal program that provided funds to local governments in the form of grants to employ and train people. There are two classes of CETA members that worked for the County.

One class of members was employed by the County in temporary, daily as needed or hourly positions. These employees were paid directly by the County. There is a second class of members who apparently were paid directly by the federal government. These members were never employed by the County and therefore do not qualify for Optional Membership in any circumstance. There have been several attempts by this first class of members to convince the County to obtain an earlier permanent hire date which to date have not been successful. Going forward when we refer to CETA members we will be referring to County paid CETA members.

We feel it is important to point out these two groups because we find that members often compare their situation to those of their co-workers. It is conceivable that in some cases one current employee may not show any records in the County (even a start and end date) for their time in the CETA program if they were paid directly by the federal government. While others may have the basic start, stop date, and pay rate information in our records because they were paid through the County's payroll system. In most of the cases of the member's who approached the Board in May, we believe they were paid through the County's payroll and so we do have some minimal information about their service.

The CETA legislation was enacted by the federal government in 1973. From 1973 to May 1977 there were no restrictions on how the CETA funds were used by local governments in terms of federal or state regulations. However, on May 13, 1977 the federal government passed new regulations that were meant to discourage agencies from including these employees in retirement systems. The federal government's goal was to try to prevent unfunded liabilities for the retirement systems

The new regulations passed at that time indicated that funds from these programs could count towards retirement if several conditions were met:

1. The employee obtained unsubsidized (sic. Permanent) employment with the agency

2. The employee obtained unsubsidized (sic. Permanent) employment with another agency where benefits were portable (i.e. reciprocal)
3. Worked for a period of time that qualified them for vesting.

These changes were to take affect by October 1, 1977. However, California was granted an extension until October 1, 1978 in order to change existing laws on the books that didn't comply with the new regulations.

The California state legislature passed AB 523 on July 1, 1979. AB 523 amended CERL Section 31511 and allowed retirement systems to exclude any employee who was paid in part or in whole by federal funds from membership. This section states:

"Persons employed as participants in a program of, and whose wages are paid in whole or in part by federal funds in accordance with, the Comprehensive Employment and Training Act of 1973 (Public Law 93-203), as amended, are excluded from membership."

By this time, the Board of Retirement had already set an end date to optional membership eligibility (December 31, 1978) for LACERA members.

Over the years LACERA members who began their service under the CETA program have attempted to have the County recognize their first hire date as their permanent date arguing that they had worked as full time employees while in a temporary status. In 2003, a group of these members working with SEIU filed a grievance with the County. This grievance went to arbitration and was dismissed based on the Doctrine of Laches (essentially the member's waited too long to file their grievance).

Historically LACERA denied most members who inquired about Optional Membership based on temporary time funded by the CETA program based on CERL Section 31551. However, in 2010, staff revisited our interpretation of this section and applied it to members hired after the effective date (July 15, 1979). This interpretation of the law does not change any of the requirements outlined in the Board's By Laws, nor does it change our standard review process and the types of documentation that we can use to prove eligibility.

THE OPTIONAL MEMBERSHIP REVIEW PROCESS

The Optional Membership review process has been designed to ensure that LACERA faithfully enacts the Board's Bylaws, pay only the promised benefit, and protect the fund from unnecessary losses in the form of unfunded liabilities. Given the potential unfunded liability impact of granting Optional Membership we have designed a robust three level review process.

The process begins in Member Services where a complete account analysis is performed. The member's records are reviewed to determine:

- a) Did the member have any prior knowledge of their right to apply for Optional Membership? Because the review of their application after the deadline set by the Bylaws has passed is based on the reasonable understanding that a member may not have been aware of their right to apply for Optional Membership before December 31, 1978, we review the account to ensure there are no records to the contrary. If there are the application is denied with an explanation that they missed the deadline.

- b) Did the member meet the required 180 days within a calendar year? Our interpretation of the Bylaws is that LACERA must verify that a member has actually worked 180 days within the calendar year not including any holiday or weekends. Therefore in order to validate a member we must have attendance records that show what days the member worked.

Once the review is complete it is checked by both the Claims Processing and Quality Assurance divisions to ensure that it is accurate. If all three verify that a member is eligible we complete the necessary changes and notify the member. If any group disagrees, the Division Managers review the case and the member is notified that they are not eligible.