

AGENDA

A REGULAR MEETING OF THE BOARD OF RETIREMENT LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., THURSDAY, DECEMBER 14, 2017

*The Board may take action on any item on the agenda,
and agenda items may be taken out of order.*

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. APPROVAL OF MINUTES
 - A. Approval of the Minutes of the Regular Meeting of November 9, 2017
- IV. REPORT ON CLOSED SESSION ITEMS
- V. OTHER COMMUNICATIONS
 - A. For Information
 - 1. October 2017 All Stars
 - 2. Chief Executive Officer's Report
(Memo dated December 4, 2017)
- VI. PUBLIC COMMENT
- VII. CONSENT AGENDA
 - A. Ratification of Service Retirement and Survivor Benefit Application Approvals.
 - B. Requests for an administrative hearing before a referee.
(Memo dated November 30, 2017)

VII. CONSENT AGENDA (Continued)

- C. Recommendation as submitted by Robert R. Hill, Interim Chief Executive Officer: That the Board approve attendance of Board members at the 2018 AIF Annual Investors' Meeting on January 8-9, 2018 in New York, New York and approve reimbursement of all travel costs incurred in accordance with LACERA's Education and Travel Policy. (Memo dated November 26, 2017)
(Placed on the agenda at the request of Ms. Gray)
- D. Recommendation as submitted by Robert R. Hill, Interim Chief Executive Officer: That the Board approve attendance of Board members at the KORIED Plan Sponsor Educational Institute on January 16-19, 2018 in Key West, Florida and approve reimbursement of all travel costs incurred in accordance with LACERA's Education and Travel Policy.
(Memo dated November 26, 2017)
(Placed on the agenda at the request of Ms. Gray)

VIII. NON-CONSENT AGENDA

- A. Recommendation as submitted by Alan Bernstein, Chair, Operations Oversight Committee: That the Board approve the purchase of Cyber Liability Insurance with the following insurance carrier:
- Cyber Liability
- North American Specialty (NAS) Insurance
A.M. Best Rating: A+, XV
Limit: \$20 million
Premium: \$113,695
(Memo dated November 14, 2017)
- B. Recommendation as submitted by Vivian H. Gray, Chair, Disability Procedures & Services Committee: That the Board approve physician, Frank Guellich, M.D. to the LACERA Panel of Physicians for the purpose of examining disability retirement applicants. (Memo dated November 21, 2017)
- C. Recommendation as submitted by Vivian H. Gray, Chair, Disability Procedures & Services Committee: That the Board adopt the recommended policy statement contained in this memorandum regarding the release of psychiatric/psychological medical records to unrepresented applicants.
(Memo dated November 28, 2017)

VIII. NON-CONSENT AGENDA (Continued)

- D. Recommendation as submitted by Vivian H. Gray, Chair, Disability Procedures & Services Committee: That the Board revise the current Panel Physician Guidelines for Evaluating Members for Disability Retirement and adopt the *Proposed* Panel Physician Guidelines.
(Memo dated November 29, 2017)
- E. Recommendation as submitted by Steven P. Rice, Chief Counsel: That the Board conduct interviews of three finalists on Federal Legislative Advocacy Services RFP, and select a firm. (Memo dated December 6, 2017)
- F. Motion by Mr. Muir: That, with respect to the erroneous denial of retroactive disability retirement benefits, the Board instruct staff to:
1. Advise affected LACERA members of the error and the legislative action the Board is undertaking to enable the Board to correct the error; and
 2. Provide progress reports to affected members during the legislative progress to enable affected members to contact their representatives in the Legislature.
- (Memo dated December 5, 2017)
- G. Recommendation as submitted by Fern Billingsy, Senior Staff Counsel: That the Board:
1. Adopt the attached Resolutions specifying pay items as “compensation earnable” and “pensionable compensation;” and
 2. Instruct staff to coordinate with the County of Los Angeles to establish necessary reporting to mechanism and procedures to permit LACERA to include or exclude items in the calculation of final compensation.
- (Memo dated December 5, 2017)

IX. FOR INFORMATION ONLY

- A. For information only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated November 22, 2017)
- B. For information only as submitted by Barry Lew, Legislative Affairs Officer, regarding the Update on SACRS 2018 Legislative Platform. (Memo dated November 27, 2017)

X. REPORT ON STAFF ACTION ITEMS

XI. GOOD OF THE ORDER
(For information purposes only)

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

- A. Applications for Disability
- B. Referee Reports

XIV. EXECUTIVE SESSION

- A. Conference with Legal Counsel - Existing Litigation
(Pursuant to Paragraph (1) of Subdivision (d) of California Government Code Section 54956.9)
 - 1. Heidi Rayburn v. Los Angeles County Employees Retirement Association
 - 2. United States of America v. Gary Ordog
Case No. CV 17-1164-FMO (C.D. Cal.)
- B. Conference with Legal Counsel - Anticipated Litigation
Significant Exposure to Litigation (Pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9)
 - 1. Administrative Appeal of Vernon Freeman
 - 2. Administrative Appeal of Sandra Claggett
 - 3. Administrative Appeal of Oksana Bihun
 - 4. Number of Other Potential Cases: 1

XV. ADJOURNMENT

Documents subject to public disclosure that relate to an agenda item for an open session of the Board of Retirement that are distributed to members of the Board of Retirement less than 72 hours prior to the meeting will be available for public inspection at the time they are distributed to a majority of the Board of Retirement Members at LACERA's offices at 300 N. Lake Avenue, Suite 820, Pasadena, CA 91101, during normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.

Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling Cynthia Guider at (626) 564-6000, from 8:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence. Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.

MINUTES OF THE REGULAR MEETING OF THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., THURSDAY, NOVEMBER 9, 2017

PRESENT: Vivian H. Gray, Vice Chair
Marvin Adams
Alan Bernstein
Anthony Bravo
Keith Knox (Chief Deputy to Joseph Kelly)
David L. Muir (Alternate Retired)
Ronald A. Okum
William Pryor (Alternate Member)

ABSENT: William de la Garza, Secretary
Shawn R. Kehoe, Chair
Joseph Kelly
Herman Santos

STAFF ADVISORS AND PARTICIPANTS

Robert Hill, Interim Chief Executive Officer
James Brekk, Interim Deputy Chief Executive Officer
Steven P. Rice, Chief Counsel

STAFF ADVISORS AND PARTICIPANTS (Continued)

John Popowich, Assistant Executive Officer

Michael Herrera, Senior Staff Counsel

Fern Billingsy, Senior Staff Counsel

Allan Cochran, Member Services Division Manager

Barry W. Lew, Legislative Affairs Officer

Francis J. Boyd, Senior Staff Counsel
Legal Division

Ricki Contreras, Division Manager
Disability Retirement Services

Tamara Caldwell, Specialist Supervisor
Disability Retirement Services

Reed Smith LLP
Harvey L. Leiderman

Thomas J. Wicke, Attorney at Law
Lewis, Marenstein, Wicke & Sherwin, LLP

I. CALL TO ORDER

The meeting was called to order by Mrs. Gray at 9:04 a.m., in the Board Room of Gateway Plaza.

II. PLEDGE OF ALLEGIANCE

Mr. Bernstein led the Board Members and staff in reciting the Pledge of Allegiance.

III. APPROVAL OF MINUTES

A. Approval of the Minutes of the Regular Meeting of October 12, 2017

Mr. Adams made a motion, Mr. Bravo seconded, to approve the minutes of the regular meeting of October 12, 2017. The motion passed unanimously.

IV. REPORT ON CLOSED SESSION ITEMS

No items were reported.

V. OTHER COMMUNICATIONS

A. For Information

1. September 2017 All Stars

Mr. Brekk announced the eight winners for the month of September: David Bayha, Natalie Ng, Benjamin Juarez, Alvina Heard, Cookie Jaranilla, Xue-Mei Gao, Steven Rice, Valery Ptacek for the Employee Recognition Program and Barbara Gordon for the Webwatcher Program. Regina Harris, Maria Luna, Penelope Huerta and Tina Sao were the winners of LACERA's RideShare Program.

2. Interim Chief Executive Officer's Report (Memo dated October 26, 2017)

Mr. Hill provided a brief discussion on the Interim Chief Executive Officer's Report and announced the following interim assignments: Mary Phillips, Interim Manager, Member Systems and Roxana Castillo, Interim Manager, Technology Systems.

V. OTHER COMMUNICATIONS (Continued)

A. For Information

2. Interim Chief Executive Officer's Report
(Memo dated October 26, 2017)

Mr. Hill noted that LACERA held its annual LACERA Forum on October 18, 2017 and mentioned that LACERA held its annual Management Retreat on October 24 – 25, 2017.

Lastly, Mr. Hill presented an award to Karina Lopez, Seema Parween, Annie Chen, Benjamin Juarez, Dennis Lee, Natalie Ng, Araceli Gamboa and James Hepker for successfully completing the LACERA University Core Benefits Course of 2017.

Mr. Rice introduced newly hired Staff Counsel, Elaine Salon, in the Legal Division.

Lastly, Mr. Brekk informed the Board that LACERA recently became aware that some pension systems in California have reported that scammers have been making phone calls to their members requesting money, and he described the resources LACERA has put in place to address this matter.

VI. PUBLIC COMMENT

There were no requests from the public to speak.

VII. CONSENT AGENDA

Mr. Muir made a motion, Mr. Bernstein seconded, to approve the following agenda items. The motion passed unanimously.

- A. Ratification of Service Retirement and Survivor Benefit Application Approvals.
- B. Request for an administrative hearing before a referee.
(Memo dated October 26, 2017)
- C. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice **Bruce E. Abbott's** appeal of an earlier effective date.
(Memo dated October 27, 2017)
- D. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice **Jessie M. Hackett's** appeal for service-connected disability retirement.
(Memo dated October 27, 2017)

VIII. NON-CONSENT AGENDA

- A. Recommendation as submitted by Shawn Kehoe, Joint Organizational Governance Committee Chair: That the Board of Retirement approve the Fiduciary Counsel Policy. (Memo dated October 25, 2017)

Mr. Steven Rice and Harvey Leiderman of Reed Smith were present and answered questions from the Board.

Mr. Bravo made a motion, Mr. Okum seconded, to approve the agenda item. The motion passed unanimously.

- B. Recommendation as submitted by Shawn Kehoe, Joint Organizational Governance Committee Chair: That the Board of Retirement approve the Policy Concerning Employment of LACERA Board Members.

Mr. Steven Rice and Harvey Leiderman of Reed Smith were present and answered questions from the Board.

VIII. NON-CONSENT AGENDA (Continued)

Mr. Okum made a motion, Mr. Adams seconded, to approve the agenda item. The motion passed unanimously.

- C. Recommendation as submitted by William de la Garza, Chair, Insurance, Benefits & Legislative Committee: That the Board of Retirement approve the joint engagement of Ackler & Associates and McHugh Koepke & Associates as LACERA's state legislative advocacy services providers.
(Memo dated October 30, 2017)

Mr. Steven Rice and Mr. Lew were present and answered questions from the Board.

Mr. Okum made a motion, Mr. Pryor seconded, to approve the agenda item. The motion passed unanimously.

- D. Recommendation as submitted by William de la Garza, Insurance, Benefits and Legislative Committee Chair: That the Board provide the following directions to its voting delegate with respect to the 2018 legislative platform of the State Association of County Retirement Systems (SACRS):
1. Vote NO on SACRS sponsorship of "Providing Definition of 'Surviving Spouse' for Eligibility for Survivor Continuances" as proposed by the Ventura County Employees' Retirement Association (VCERA).
 2. Vote NO on SACRS sponsorship of "Time Limits of Filing Application for Disability Retirement" as proposed by the Ventura County Employees' Retirement Association (VCERA).
 3. Vote NO on SACRS sponsorship of "Trustee Authority over Retirement Office Executive Staff" as proposed by the Tulare County Employees Retirement Association (TCERA).

(Memo dated October 12, 2017)

Mr. Steven Rice and Mr. Lew were present and answered questions from the Board.

VIII. NON-CONSENT AGENDA (Continued)

Mr. Muir made a motion, Mr. Okum seconded, to approve the agenda item. The motion passed unanimously.

IX. REPORTS

The following items were received and filed:

- A. For Information Only as submitted by Steven P. Rice, Chief Counsel, Update on Work Plans for:
 - (1) Proposal that Chief Counsel Report Jointly to Board of Retirement and Board of Investments, and
 - (2) Proposal that Chief Investment Officer Report to Board of Investments (Memo dated October 23, 2017)
- B. For Information Only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated October 31, 2017)
- C. For Information Only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the 2017 Quarterly Reports of Paid Invoices 3rd Quarter-July 1, 2017 to September 30, 2017. (Memo dated October 23, 2017)

X. REPORT ON STAFF ACTION ITEMS

There was nothing to report.

XI. GOOD OF THE ORDER

(For information purposes only)

Mrs. Gray discussed the importance of conducting sexual harassment training and discussions regarding this matter.

Mr. Knox shared his experience of attending the Milken Institute Conference in Los Angeles, CA.

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Law Enforcement
Service-Connected Disability Applications

On a motion by Mr. Okum, seconded by Mr. Pryor, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
711C	LINDA L. BRODKA
712C*	YOLANDA S. LOCKHART
713C**	TRACEE R. ALLEN
714C**	MELVA Y. MITCHELL
715C	BELA J. DENKINGER
716C	ROBERT M. LYZNICK
717C	PATRICK S. DAVOREN
718C**	JAMES L. BROWN II

* Present

** Granted SCD – Employer Cannot Accommodate

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Law Enforcement (Continued)
Service-Connected Disability Applications

On a motion by Mr. Pryor, seconded by Mr. Bernstein, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
719C*	THOMAS J. VERNOLA
720C	SYLVIA A. BROSSOIT
721C	RALPH E. MILLER

* Granted SCD – Employer Cannot Accommodate

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Fire, Lifeguards
Service-Connected Disability Applications

On a motion by Mr. Pryor seconded by Mr. Okum, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
1900A	TIM L. PUTICH
1901A*	STEVEN R. MARQUEZ
1902A	THEODORE K. GARCIA
1903A	THOMAS E. BOWLIN

* Granted SCD – Retroactive

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

General Members

Service-Connected Disability Applications

On a motion by Mr. Adams seconded by Mr. Bernstein, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
2755B*/***	ANN W. MAUGHAN
2756B	LORRAINE K. GRANT
2757B**	GENO R. RANDLE
2758B*	CRISTINE M. ENG
2759B*	RIMA VAN NAS
2760B**	JOSEPH C. THOMA IV

* Granted SCD – Retroactive

** Granted SCD – Employer Cannot Accommodate

*** Granted SCD – Present

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

General Members

Non-Service-Connected Disability Applications

On a motion by Mr. Bernstein seconded by Mr. Pryor, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

APPLICATION NO.

NAME

4361

LANCE M. GOODMAN SR.

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

A. Applications for Disability

APPLICATION NO. & NAME

BOARD ACTION

6984A – CHERYL A. WISE

Mr. Okum made a motion, Mr. Pryor seconded, to deny a service connected disability retirement since the employer can accommodate.

Mr. Adams made a substitute motion, Mr. Bravo seconded, to grant a non-service connected disability. The motion passed unanimously.

6985A – MARIA R. MARTINEZ

Mr. Muir made a motion, Mr. Okum seconded, to deny a service connected disability retirement since the employer can accommodate. The motion passed unanimously.

6986A – GREGORY A. THURMAN

Mrs. Gray made a motion, Mr. Muir seconded, to return to staff for additional information. The motion passed unanimously.

6987A – LORINDA J. LE BLANC

Mr. Pryor made a motion, Mr. Bernstein seconded, grant a service connected disability pursuant to Government Code Sections 31720 and 37124.

Mrs. Gray made a substitute motion, Mr. Adams seconded, to return to staff for additional information. The motion passed unanimously.

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

A. Applications for Disability (Continued)

<u>APPLICATION NO. & NAME</u>	<u>BOARD ACTION</u>
6988A – KEVIN A. HARVEY	Mr. Pryor made a motion, Mrs. Gray seconded, to grant a non-service connected disability retirement pursuant to Government Code Sections 31720 and 31726 (a) or (b) and 37124. The motion passed unanimously.
6989A – DORA BARRIOS	Mr. Okum made a motion, Mr. Muir seconded, to grant a non-service connected disability retirement pursuant to Government Code Sections 31720. The motion passed unanimously.
2742A – DEBORAH JOHNSON*	Mr. Okum made a motion, Mr. Bernstein seconded, to grant a service connected disability retirement pursuant to Government Code Section 31720. The motion passed unanimously.
6806A – MARK A. LONG	Mr. Pryor made a motion, Mr. Adams seconded, to grant a service connected disability retirement pursuant to Government Code Section 31720 and 31720.5. The motion passed unanimously.
6930A – CHARITY D. HOWARD	Mr. Pryor made a motion, Mr. Okum seconded, to find the applicant not permanently incapacitated. The motion passed unanimously.
6946A – PRISCILLA L. OSBORNE	Mr. Bernstein made a motion, Mr. Kehoe seconded, to grant a service connected disability retirement since the employer cannot accommodate. The motion passed unanimously.

*Applicant Present

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

A. Applications for Disability (Continued)

APPLICATION NO. & NAME

BOARD ACTION

6960A – MYE’NICOLE S. REED

Mr. Bernstein made a motion, Mr. Bravo seconded, to grant a service-connected disability retirement pursuant to Government Code Section 31720. The motion passed unanimously.

B. Referee Reports

APPLICATION NO. & NAME

BOARD ACTION

EDWARD V. MARQUEZ

Thomas J. Wicke for the applicant
Eugenia W. Der for the respondent

Mr. Bernstein made a motion, Mr. Okum seconded, to grant a non-service connected disability retirement. The motion passed unanimously (roll call) with Messrs. Knox, Adams, Bravo, Okum, Bernstein, Pryor, Muir and Mrs. Gray voting yes.

XIV. EXECUTIVE SESSION

A. Conference Legal Counsel - Existing Litigation
(Pursuant to Paragraph (1) of Subdivision (d) of California Government Code Section 54956.9)

1. United States of America v. Gary Ordog
Case No. CV 17-1664-FMO (C.D. Cal.)

The Board met in Executive Session pursuant to Paragraph (1) of Subdivision (d) of California Government Code Section 54956.9. There was nothing to report at this time.

XIV. EXECUTIVE SESSION (Continued)

2. Michael Herek v. Board of Retirement
Case No. B275808 (Ct.App. Second App. District)
Case No. BS155097 (L.A. Super. Ct.)

The Board met in Executive Session pursuant to Paragraph (1) of Subdivision (d) of California Government Code Section 54956.9. There was nothing to report at this time.

- B. Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation (Pursuant to Paragraph 2 of Subdivision (d) of California Government Code Section 54956.9)

1. Administrative Appeal of Norma Gonzalez

The Board met in Executive Session pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9. The Board voted unanimously 8 – 0 on a motion by Mr. Bernstein, seconded by Mr. Pryor, to grant the appeal and allow Mrs. Gonzalez to make the ARC purchase she had requested.

2. Administrative Appeal of Chelsea Cheung

The Board met in Executive Session pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9. The Board voted unanimously 8 – 0 on a motion by Mr. Bernstein, seconded by Mr. Muir, to grant the appeal and allow Mrs. Cheung to change her non-service connected disability effective date subject to refund of overpaid benefits and reduction of her monthly disability retirement benefit.

November 9, 2017

Page 17

XV. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 11:20 a.m.

Green Folder Information (Information distributed in each Board Member's Green Folder at the beginning of the meeting)

1. Disability Retirement Evaluation Report Correction Memo
(Memo dated October 11, 2017) (Confidential)
2. Disability Retirement Applications Agenda Correction
(Memo dated October 11, 2017) (Confidential)
3. Panel Physicians Examination Report
(Memo dated October 11, 2017) (Confidential)
4. Dismiss with Prejudice the appeal Of Adela Campbell Correction Memo
(Memo dated October 10, 2017) (Confidential)


WILLIAM DE LA GARZA, SECRETARY

SHAWN R. KEHOE, CHAIR



December 4, 2017

TO: Each Member
Board of Retirement
Board of Investments

FROM: Robert R. Hill 
Interim Chief Executive Officer

SUBJECT: **CHIEF EXECUTIVE OFFICER'S REPORT**

I am pleased to present the Chief Executive Officer's Report that highlights a few of the operational activities that have taken place during the past month, key business metrics to monitor how well we are meeting our performance objectives, and an educational calendar.

The Fiscal Year 2016–2017 Annual Report

Each year, the Financial & Accounting Services Division (FASD) and Communications Division work diligently to create LACERA's annual report. FASD initiates the process and works with an external auditor to generate the financial statement report. Once complete, the report is shared with the Communications Division, which reformats the financial data and develops a positive message—the LACERA story—through graphics, photos, and text, creating the annual report.

We have three components to our annual report package: Comprehensive Annual Financial Report (CAFR); Popular Annual Financial Report (PAFR); and the Who We Are brochure, which is used by Human Resources for job fairs and for sharing a high-level overview of LACERA to our new hires.

Each December, the Communications Division mails the PAFR along with our two professionally written and designed newsletters, *PostScript* and *Spotlight*, to all of our members (currently more than 165,000 people). We also include a handy payday calendar for our retirees that features both direct deposit and check mailing dates. Providing the PAFR to our members gives them a snapshot of LACERA from the previous fiscal year, highlighting the funding ratio, asset allocation percentages, additions and deductions of the pension fund, quick-hit stats of our global accomplishments, and a listing of our board members. Members who would like a copy of the entire CAFR can find the electronic version on lacera.com in January 2018, or they can call the Call Center to request a hard copy be mailed to them.

The CAFR theme for the fiscal year ended June 30, 2017 is “Different Paths, One Destination.” It highlights how the employees serving Los Angeles County are each on a unique personal journey with one common destination: retirement. LACERA is proud to be a part of that journey, with services that begin the moment a new hire becomes a member and continue throughout his or her career. No matter which career path employees follow or how they prioritize their lives, members who meet eligibility requirements are ensured a lifetime allowance upon retirement. The theme unfolds in each of the CAFR’s four main sections—financial, investment, actuarial, and statistical—presenting relevant topics pertaining to a member’s journey toward retirement, such as accumulating service credit and attending a pre-retirement workshop. Retirement is a rewarding destination for people who serve Los Angeles County, and LACERA makes it possible by fulfilling its Mission to Produce, Protect, and Provide the Promised Benefits.

RH: jp

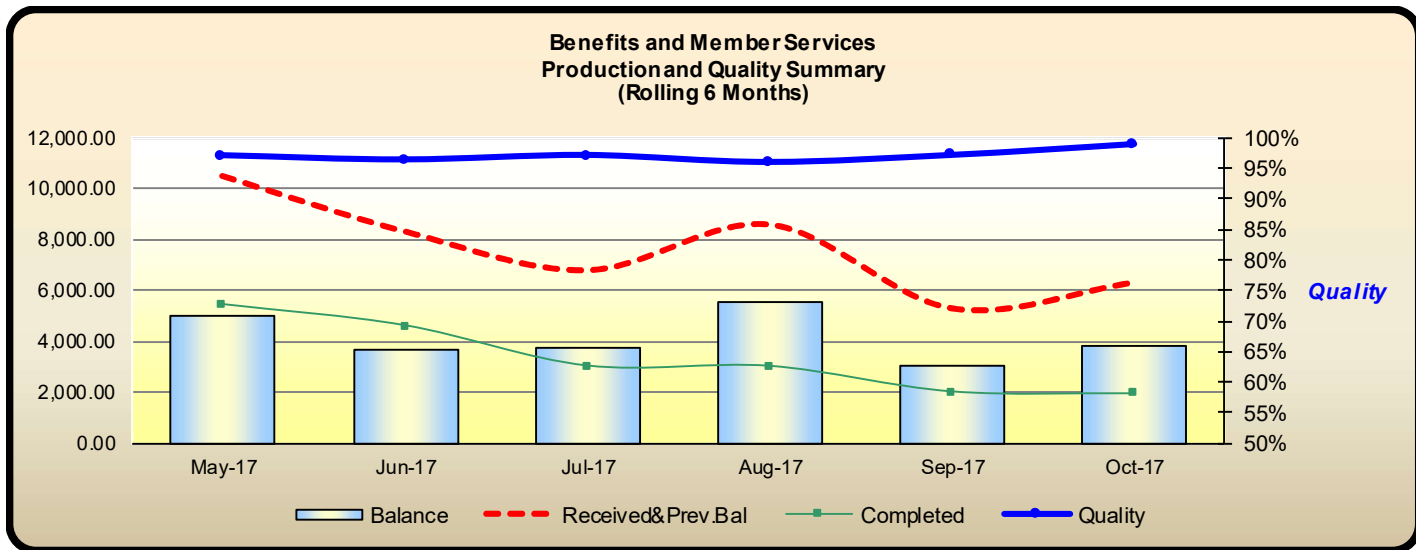
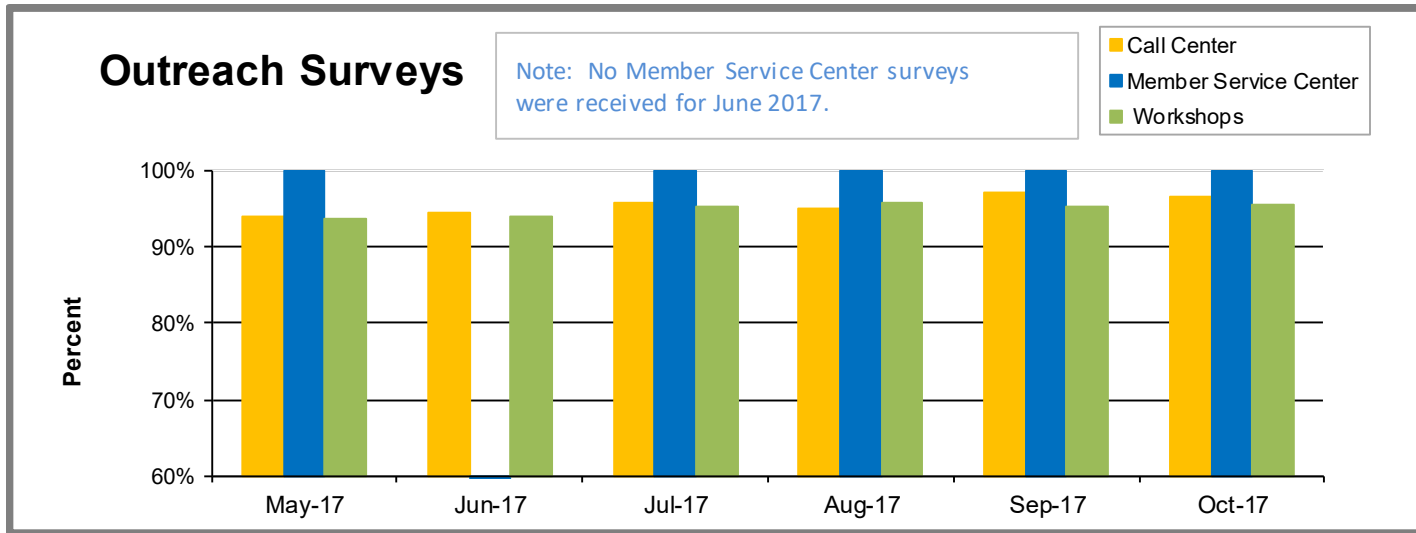
CEO report Nov 2017.doc

Attachments

LACERA's KEY BUSINESS METRICS

OUTREACH EVENTS AND ATTENDANCE

Type	# of WORKSHOPS		# of MEMBERS	
	Monthly	YTD	Monthly	YTD
Benefit Information	29	76	29	76
Mid Career	4	6	4	6
New Member	14	53	14	53
Pre-Retirement	15	37	15	37
General Information	0	1	0	1
Retiree Events	2	4	2	4
Member Service Center	Daily	Daily	Daily	Daily
TOTALS				



Member Services Contact Center			RHC Call Center	Top Calls
Overall Key Performance Indicator (KPI)	89.05%			
Category	Goal	Rating		Member Services
Call Center Monitoring Score	95%	94.22%	100%	1) Workshop Info./Appointments: Inquiry
Grade of Service (80% in 60 seconds)	80%	42%	40%	2) Benefit Pmts.-Gen Inquiry/Payday Info
Call Center Survey Score	90%	96.49	xxxxx	3) Death: Benefit Explanation
Agent Utilization Rate	65%	74%	83%	
Number of Calls	11,574		4,625	Retiree Health Care
Number of Calls Answered	9,966		4,113	1) Medical Benefits - General Inquiries
Number of Calls Abandoned	1,608		512	2) Medical-New Enroll./Change/Cancel
Calls-Average Speed of Answer (hh:mm:ss)	00:03:31		00:03:19	3) General Inquiries (RHC)
Number of Emails	293		193	
Emails-Average Response Time (hh:mm:ss)	06:14:24		(Days) 1	Adjusted for weekends

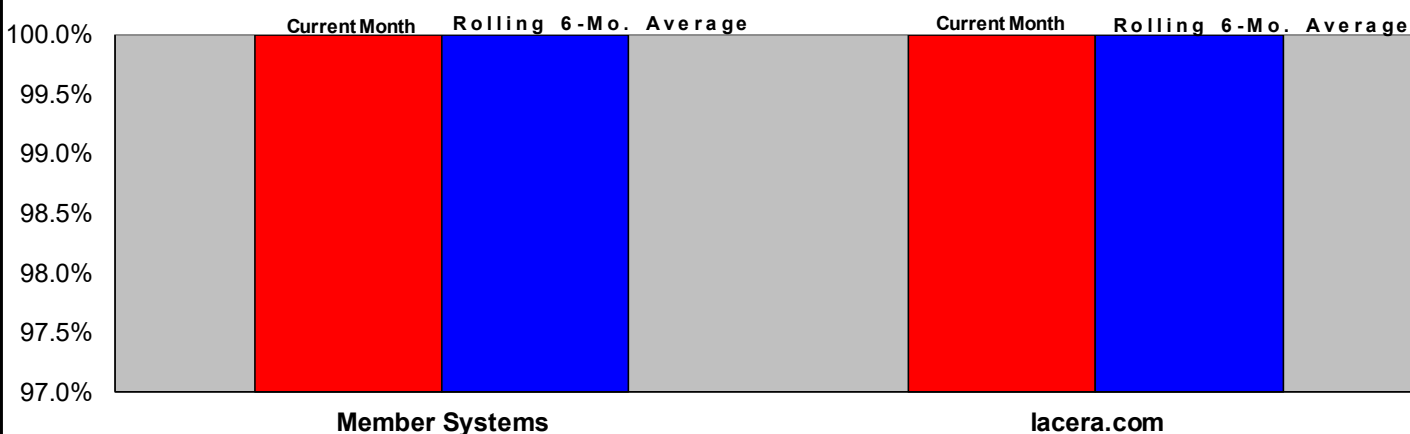
LACERA's KEY BUSINESS METRICS

Fiscal Years	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Assets-Market Value	\$38.7	\$30.5	\$33.4	\$39.5	\$41.2	\$43.7	\$51.1	\$51.4	\$50.9	\$55.8
Funding Ratio	94.5%	88.9%	83.3%	80.6%	76.8%	75.0%	79.5%	83.3%	79.4%	n/a
Investment Return	-1.4%	-18.2%	11.8%	20.4%	0.3%	12.1%	16.8%	4.3%	1.1%	13.0%

DISABILITY INVESTIGATIONS

APPLICATIONS	TOTAL	YTD		APPEALS	TOTAL	YTD
On Hand	616	xxxxxxx		On Hand	122	xxxxxxx
Received	35	183		Received	4	12
Re-opened	0	1		Administratively Closed/Rule 32	2	10
To Board – Initial	30	132		Referee Recommendation	1	2
Closed	0	20		Revised/Reconsidered for Granting	1	2
In Process	621	621		In Process	122	122

SYSTEMS AVAILABILITY - OCTOBER 2017



Active Members as of 12/1/17		Retired Members/Survivors as of 12/1/17			Retired Members	
		Retirees	Survivors	Total		
General-Plan A	171	18,179	4,600	22,779	Monthly Payroll	266.23 Million
General-Plan B	54	692	66	758	Payroll YTD	1.1 Billion
General-Plan C	67	422	62	484	No. Monthly Added	275
General-Plan D	44,750	13,317	1,238	14,555	Seamless %	99.27%
General-Plan E	19,243	11,964	1,020	12,984	No. YTD Added	1,109
General-Plan G	20,971	8	0	8	Seamless YTD %	99.55%
Total General	85,256	44,582	6,986	51,568	Direct Deposit %	95.00%
Safety-Plan A	7	5,600	1,574	7,174		
Safety-Plan B	10,679	4,935	249	5,184		
Safety-Plan C	2,204	3	0	3		
Total Safety	12,890	10,538	1,823	12,361		
TOTAL ACTIVE	98,146	TOTAL RETIRED	55,120	8,809	63,929	

Health Care Program (YTD Totals)

	Employer Amount	Member Amount
Medical	157,837,281	13,382,403
Dental	14,089,908	1,455,091
Med Part B	18,805,280	xxxxxxxxxx
Total Amount	\$190,732,469	\$14,837,494

Funding Metrics as of 6/30/17

Employer Normal Cost	9.97%*
UAAL	9.73%*
Assumed Rate	7.25%*
Star Reserve	\$614 million
Total Assets	\$52.7 billion

Health Care Program Enrollments (Monthly)

Medical	49,018
Dental	50,124
Med Part B	32,656
Long Term Care (LTC)	706

Member Contributions as of 6/30/17

Annual Additions	\$526.6 million
% of Payroll	6.65%*

Employer Contributions as of 6/30/17

Annual Addition	\$1,331.4 million
% of Payroll	19.70%*

*Effective July 1, 2017, as of 6/30/16 actuarial valuation.

Date	Conference
January, 2018 28-30	NCPERS (National Conference on Public Employee Retirement Systems) Legislative Conference Washington D.C.
February, 2018 1-2	IMN (Information Management Network) Annual Beneficial Owners' Intl. Securities Finance & Collateral Mgmt. Conference Fort Lauderdale, FL
March, 2018 3-6	CALAPRS (California Association of Public Retirement Systems) General Assembly Meeting Indian Wells, CA
5-9	Healthcare Information and Management Systems Society Conference & Expo Las Vegas, NV
7-8	AHIP (America's Health Insurance Plans) National Health Policy Conference Washington D.C.
8-9	PREA (Pension Real Estate Association) Spring Conference Beverly Hills, CA
11-13	2018 Commonfund Forum Orlando, FL
12-14	Council of Institutional Investors (CII) Spring Conference Washington D.C.
14-16	Pacific Pension Institute (PPI) North American Winter Roundtable Washington D.C.
19-21	InfoSecWorld Conference & Expo 2018 Lake Buena Vista, FL
28-30	CALAPRS (California Association of Public Retirement Systems) Advanced Principles of Pension Management for Trustees at UCLA Los Angeles, CA
April, 2018 9-11	IFEBC (International Foundation of Employment Benefit Plans) Investments Institute Naples, FL
16-18	CRCEA (California Retired County Employees Association) Spring Conference Santa Barbara, CA
23-26	Portfolio Concepts & Management (<i>prev. Fundamentals of Money Management</i>) Wharton School, University of Pennsylvania (IFEBC)



November 30, 2017

TO: Each Member
Board of Retirement

FROM: Ricki Contreras, Division Manager
Disability Retirement Services

SUBJECT: **APPEALS FOR THE BOARD OF RETIREMENT'S MEETING
OF DECEMBER 14, 2017**

IT IS RECOMMENDED that your Board grant the appeals and requests for administrative hearing received from the following applicants, and direct the Disability Retirement Services Manager to refer each case to a referee:

6975A	La Shell D. Long	In Pro Per	Deny SCD – Ineligible for Disability Retirement
6977A	Malcolm E. Kennedy	In Pro Per	Deny SCD
6989A	Dora Barrios	In Pro Per	Deny SCD – Grant NSCD
6985A	Maria R. Martinez	In Pro Per	Deny SCD – Employer Can Accommodate

RC:kw

Memo. New Appeals.docx



November 26, 2017

TO: Each Member
Board of Retirement

FROM: Robert R. Hill 
Interim Chief Executive Officer

FOR: Board of Retirement Meeting of December 14, 2017

SUBJECT: 2018 AIF Annual Investors' Meeting
January 8 – 9, 2018 in New York, New York

The 2018 AIF Annual Investors' Meeting will take place on January 8 – 9, 2018 at the Harvard Club on 35 W 44th Street New York, New York. AIF is an independent economic think tank focusing on institutional investment policy. AIF's mission is to promote the exchange of best ideas, practices and information among institutional investors globally to help them achieve their investment objectives.

The main conference highlights include the following:

- Taking the Right Risks, Knowing When, Where, and How to Take the Risks that Yield the Greatest Rewards within the Financial Industry
- Hedge Funds and Other Liquid Diversities
- Private Credit Session
- Private Equity Session

The conference meets LACERA's policy of an average of five (5) hours of substantive educational content per day. The standard hotel rate at the Marriott East Side Hotel is \$350.00 per night plus applicable taxes and there is no registration fee.

If the registration fee is insufficient to pay the cost of the meals provided by the conference sponsor, LACERA must reimburse the sponsor for the actual cost of the meals, less any registration fee paid. Otherwise, the attendee will be deemed to have received a gift equal to the value of the meals, less any registration fee paid, under California's Political Reform Act.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:

Approve attendance of Board members at the 2018 AIF Annual Investors' Meeting on January 8 – 9, 2018 in New York, New York and approve reimbursement of all travel costs incurred in accordance with LACERA's Education and Travel Policy.

RH/lg
Attachment

Best ideas.
Best practices.
Best information.

AIF Global



2018 AIF Annual Investors' Meeting

January 8–9 · New York City, New York

AIF is an independent economic think tank focusing on institutional investment policy. AIF's mission is to promote the exchange of best ideas, practices and information among institutional investors globally to help them achieve their investment objectives.

Monday, January 8

3:00–3:30 p.m.

Registration

3:30–4:15 p.m.

Women Investors' Session: Taking the Right Risks—Knowing When, Where, and How to Take the Risks that Yield the Greatest Rewards within the Financial Industry

Session Leaders

- Melissa Waller, President, **AIF Institute** and Former Deputy Treasurer, **North Carolina Retirement System**
- Panel of Industry Leaders

4:15–5:00 p.m.

Breakout Group Discussions

5:00–6:00 p.m.

Breakout Group Reporting and Women Investors'
Meeting Wrap-Up

6:00–6:30 p.m.

Reception

Tuesday, January 9

8:00 a.m.–8:30 a.m.

Registration

8:30 a.m.–9:30 a.m.

Portfolio Construction Session

Session Leader

- Pete Keliuotis, Senior Managing Director, **Cliffwater**

9:30 a.m.–11:30 a.m.

Private Equity Sessions—I and II

Session Leader

- Michael Elio, Partner, **StepStone Group**

11:45 a.m.–12:45
p.m.

Private Credit Session

Session Leader

- Patrick Adelsbach, Principal, **Aksia**

12:45 p.m.–2:30 p.m.

CIO Lunchtime Panel Discussion

*Moderated by Gregory Brown, Ph.D., Sarah Graham Kenan Distinguished Scholar of Finance, **UNC Kenan-Flagler Business School***

Session Leaders

- Ash Williams, ED-CIO, **Florida State Board of Administration** and **AIF Investor Advisory Board Chair**
- Andrew Palmer, CIO, **Maryland State Retirement**
- Bryan Lewis, CIO, **Pennsylvania State Employees' Retirement System**
- TJ Carlson, CIO, **Texas Municipal Retirement System**

2:30 p.m.–3:30 p.m.

Hedge Funds and Other Liquid Diversifiers Session

Session Leader

- Jonny Lach, Partner, **Albourne**

3:45 p.m.–4:45 p.m.

Real Assets Session

Session Leaders

- Rob Kochis, Principal, **Townsend Group**
- Andrew Sawyer, CIO, **Maine Public Employees Retirement System**

5:00–6:00 p.m.

Investor Deep Dive Session

Case Study: Investing Sustainably at Ontario Teachers' Pension Plan

Session Leader

- Josh Lerner, Ph.D., **AIF Advisory Board Chair** and *Jacob H. Schiff Professor of Investment Banking, **Harvard Business School***

6:00 p.m.–7:15 p.m.

Reception

7:15 p.m.–9:30 p.m.

Dinner and Washington Insider Review—Panel Discussion About Federal Initiatives Affecting Institutional Investing

Panel Discussion (7:45 p.m.–8:45 p.m.)

*Moderated by Rick Davis, Campaign Manager, **McCain for President 2008** and COO, **Pegasus Capital***



November 26, 2017

TO: Each Member
Board of Retirement

FROM: Robert R. Hill 
Interim Chief Executive Officer

FOR: Board of Retirement Meeting of December 14, 2017

SUBJECT: KORIED Plan Sponsor Educational Institute
January 16 – 19, 2018 in Key West, Florida

The 2018 KORIED Plan Sponsor Educational Institute will take place on January 16 – 19, 2018 at the Marriott Beachside Hotel in Key West, Florida. The Plan Sponsor Educational Institute will bring together Public, Private Pension and Taft-Hartley Trustees and staff who share a common interest in fiduciary responsibilities. The Institute is designed for Trustees to gain a better understanding of the current issues pension funds and Unions are facing. The Institute will also provide a unique opportunity for participants to exchange views with decision-makers of the pension fund industry.

The main conference highlights include the following:

- Are Alternative Investments Today Going to be the Traditional Investments of Tomorrow?
- Opportunities, Strategies, Risks & Rewards Investing in Real Assets
- Integration and Evaluation of ESG Policies
- Multi-National Risks and Rewards in Investing

The conference meets LACERA's policy of an average of five (5) hours of substantive educational content per day. The standard hotel rate at the Marriott Beachside Hotel is \$269.00 per night plus applicable taxes and registration fee is \$395.00.

If the registration fee is insufficient to pay the cost of the meals provided by the conference sponsor, LACERA must reimburse the sponsor for the actual cost of the meals, less any registration fee paid. Otherwise, the attendee will be deemed to have received a gift equal to the value of the meals, less any registration fee paid, under California's Political Reform Act.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:

Approve attendance of Board members at the KORIED Plan Sponsor Educational Institute on January 16 – 19, 2018 in Key West, Florida and approve reimbursement of all travel costs incurred in accordance with LACERA's Education and Travel Policy.

RH/lg
Attachment

**Tuesday
January 16, 2018**

3:00 pm – 6:00 pm
Registration

6:00 pm – 7:00 pm
Opening Reception

**Wednesday
January 17, 2018**

8:00 am – 8:45 am
Breakfast and Registration

8:45 am – 9:00 am
Co-Chair of the Day

9:00 am – 10:00 am
**Are Alternative Investments
Today Going to be the
Traditional Investments of
Tomorrow**

Domestic Equities and Domestic Fixed Income some say have not been strong enough to help the plans meet their target returns. Investing in Developed International Markets is very normal now – everybody does it. This panel will discuss is alternatives replacing traditional investing? What does active vs. passive mean today?

10:00 am – 10:15 am
Break

10:15 am – 11:30 am
**“When the \$h*! Hits the Plan!”
Solutions for Distressed Pension
Plans:**

Past, Present and Future

- Hear from our speakers who are in the middle of the fray involving Bankruptcy
- Impact on Pension Plans dealing with staggering debt.
- Discussion on why the State may be next to look to the

Courts to save its pension plans in light of years of severe underfunding.

Moderator

Speakers

11:30 am – 12:30 pm
**Opportunities, Strategies, Risks
& Rewards Investing in Real
Assets**

In a world where Institutional Investors are always seeking Alpha, can Real Assets offer the potential benefits of diversification, inflation protection, capital appreciation, and income? This panel will provide insights, approaches and ideas for using Real Assets.

Moderator

Speakers

12:30 pm – 1:30 pm
Lunch

Speaker (Tentative) Shane Osborn

6:00 pm – 8:00 pm
Reception on the Beach

**Thursday
January 18, 2018**

7:30 am – 8:15 am
Breakfast and Registration

8:15 am – 8:30 am
Co-Chair of the Day

8:30 am – 9:30 am
**Integration and Evaluation of
ESG Policies**

9:30 am – 9:45 am
Break

9:45 am – 10:30 am
**Case Study on Lessons
(Investing) Learned From
The Petrobras Bribery
Scandal**

- What can a Plan do when faced with fraud that occurred overseas?
- Key issues facing Plan Sponsors in the wake of such an international fraud?
- Considerations if Plans have invested in a security purchased on a non-U.S. stock exchange that lost value due to a fraud

Moderator

Speakers

10:30 am – 11:45 am
Opportunities in Credit
What still looks attractive vs what to avoid.

Moderator

Speakers

12:00 pm – 1:00 pm
Lunch

6:30 pm – 7:30 pm
Reception

November 16, 2017

Friday
January 19, 2018

7:45 am – 8:15 am

Breakfast and Registration

8:15 am – 8:30 am

Co-Chair of the Day

8:30 am – 9:15 am

Promoting Good Corporate Governance
by Institutional Investors

Speaker

9:15 am – 10:30 am

**Multi-National Risks and
Rewards in Investing**

Moderator

Speakers

Closing Remarks



November 14, 2017

TO: Each Board Member
Board of Retirement

FROM: Operations Oversight Committee
Alan Bernstein, Chair
Anthony Bravo, Vice Chair
Joseph Kelly
Ronald Okum
David Muir, Alternate

FOR: December 14, 2017 Board of Retirement Meeting

SUBJECT: CYBER LIABILITY INSURANCE

RECOMMENDATION

That the Board of Retirement approve the purchase of Cyber Liability Insurance with the following insurance carrier:

Cyber Liability

- North American Specialty (NAS) Insurance
A.M. Best Rating: A+, XV
Limit: \$20 million
Premium: \$113,695

EXECUTIVE SUMMARY

For nearly two decades, LACERA has been purchasing various types of insurance coverage to mitigate the risk of unforeseen damages. A recognized gap in that coverage is Cyber Liability insurance. In response to data breaches and other cyber-crimes against organizations, LACERA continually evaluates ways to protect the Trust Funds against potential losses resulting from any such events.

In the last several years, data breaches have resulted in major fines and legal fees – not to mention administrative nightmares – for many companies, large and small. Many of these high-profile data breaches affected organizations like Yahoo, Sony,

Cyber Liability Insurance
Board of Retirement
Page 2 of 5

Anthem, and the Federal Government. Businesses of all types are beginning to realize that no industry is safe from a data breach and having Cyber Liability Insurance can be an effective precaution to mitigate losses from such a breach.

Initially, Cyber Liability Insurance was targeted to e-commerce businesses. As non-e-commerce data breaches became more prevalent, Cyber Liability Insurance policies began to evolve. This evolution led to policies covering all types of organizations. Cyber Liability Insurance generally covers the financial liability for a data breach and cyber-crimes involving confidential customer information, such as Social Security numbers, credit card numbers, account numbers, driver's license numbers, and health records.

In light of the growing level of Cyber Security breaches and at your Boards' direction, LACERA has worked in conjunction with Kaercher, Campbell & Associates (KCAIB). LACERA contracts with KCAIB as our insurance Broker. Their purpose is to research appropriate insurance plans, conduct competitive bidding processes, and provide recommendations for LACERA's consideration. KCAIB provided a list of providers of Cyber Liability Insurance to LACERA. A cross-functional team evaluated each recommendation and analyzed the suitability of the coverage offered by each to determine which would provide the best coverage to protect the Trust Funds. This team took into account the organizational risks while considering both the cost benefits and the cost of the coverage.

CYBER LIABILITY INSURANCE

As with all computer-reliant entities, LACERA daily faces cyber and privacy threats. These threats include: malicious or negligent insiders, criminal hackers, third party compromise, and/or business interruption (cryptolocker/ransomware) types of attack to name a few. Due to our due diligence LACERA has been fortunate not to have experienced a data breach event of these types to date. Because we have no history to rely on, it is difficult to compile a realistic cost benefit analysis, and we have relied on industry statistics and figures to determine the possible financial impact to LACERA. Based on industry standards LACERA may be required to provide the following in an event of a data breach:

- Forensic Examination
- Notification of Third Parties
- Call Centers (to handle a higher volume of calls than we can support internally)

Cyber Liability Insurance
Board of Retirement
Page 3 of 5

- Credit or Identity Monitoring
- Defense Cost
- Public Relations
- Regulatory Proceedings, Fines and Penalties
- Comprehensive Written Information Security Program

The costs and expenses of a data breach can be wide ranging. According to the 2016 NetDiligence Cyber Claims Study report, the average price tag associated with a data breach can cost the organization up to nearly \$15 million. They state that although each breach has its own set of unique factors, the financial impact is fairly consistent across the board. Depending on the severity of the breach, the impact to the organization may include any or all of the following:

- Information Loss
- Business Disruption
- Financial Loss
- Equipment Damages
- Defense Cost
- Loss of Members' Trust

SELECTION

Potential costs associated with a data breach can add up rapidly and can be a financial burden to the organization. The review team (team) that included representatives from the Administrative Services Division, Legal Office, Systems Division, and the Executive Office conducted an analysis to determine the appropriate amount of coverage required to ensure that LACERA is upholding its fiduciary responsibility in protecting the Trust Funds.

During this analysis, the team considered the size of the Trust Funds, the number of members (direct and indirect), the number of records (electronic and paper), and the scope of organizational losses due to breaches in organizations other than LACERA. The team determined that a \$20 million policy limit would be a sufficient amount of coverage to mitigate the severity of potential financial losses due to a data breach.

Based on LACERA's requirements, the Insurance Broker, KCAIB provided information from various insurance carriers who offer Cyber Liability Insurance. KCAIB is familiar with and aware of LACERA's process for selecting vendors; therefore, their focus was on obtaining the most comprehensive coverage at the most competitive price for

**Cyber Liability Insurance
Board of Retirement
Page 4 of 5**

LACERA. KCAIB presented quotes from the following insurance carriers for consideration:

Carrier	A.M. Best Rating
NAS	A+, XV
XL – Indian Harbor	A+, XV
RSUI Indemnity Company	A+, XIII
Chubb	A++, XV
Hiscox Insurance Company	A, XI
Beazley Insurance Company	A, XII

The team conducted a comprehensive comparative analysis of each carrier’s quotation for the Cyber Liability Insurance to determine the policy that would provide the best protection of the Trust Funds while still opting for the most competitive price. The criteria used for this analysis is as follows:

- A side-by-side comparison of provisions
- The best protection of the LACERA Trust Funds
- The most comprehensive coverage for the most competitive price

After reviewing the results of the comparative analysis of each insurance carrier’s policy form, the team found the NAS Insurance Company's (NAS) policy to be the most comprehensive. NAS was the only carrier to offer the full \$20 million policy limit. The other carriers offered \$5 million in coverage requiring multiple layers to reach the required \$20 million limit. This would amount to a 25 percent increase in cost over the NAS proposal.

NAS provides these services:

- Access to Expert Cyber Risk Advisors
- 24/7 Online Training Courses
- Sample Policies and Vendor Agreement Templates
- Cyber Security Training Courses
- Compliance Materials
- Risk Management Tools and Guidelines
- Anti-Phishing / Social Engineering courses
- Incident Response Plans

**Cyber Liability Insurance
Board of Retirement
Page 5 of 5**

The proposal from NAS included hourly rates covered by the policy for pre-approved legal firms and forensic/data recovery specialists, should LACERA require these services in the event of a data breach. The team felt strongly that the fee coverage of \$250.00 per hour offered by NAS was lower than what the organization was willing to accept. As a result, NCAIB was effective in negotiating an increase to the hourly rate that would be more favorable to LACERA.

The newly negotiated hourly rates with NAS are as follows:

- Legal Fees - \$425.00 per hour
- Forensic/data Recovery Specialists - \$350.00 per hour

In addition to this hourly rate increase, NCAIB also requested on LACERA's behalf that NAS allow LACERA to select their choice of outside counsel to be added to the pre-approved list and NAS agreed. Therefore, NAS added the Alston and Bird Legal Firm to the pre-approved list for LACERA.

As an extra layer of review, the team also requested that Nossman L.L.P., LACERA's fiduciary counsel's expert in cyber insurance, review the coverage profile. Nossman advised that LACERA's proposed coverage is reasonable and at or above the coverage obtained by other public pension systems.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD approve the purchase of Cyber Liability Insurance with the following insurance carrier:

Cyber Liability

- North American Specialty (NAS) Insurance
A.M. Best Rating: A+, XV
Limit: \$20 million
Premium: \$113,695



November 21, 2017

TO: Each Member
Board of Retirement

FROM: Disability Procedures & Services Committee
Vivian H. Gray, Chair
Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

FOR: December 14, 2017 Board of Retirement Meeting

SUBJECT: **CONSIDER APPLICATION FOR LACERA PANEL OF EXAMINING
PHYSICIAN(S)**

On November 9, 2017, the Disability Procedures & Services Committee reviewed the attached application for the LACERA Panel of Examining Physicians.

The application package has been reviewed by the Committee. After discussion, the Committee voted to accept the application of the following physician and submit to the Board of Retirement for approval to the LACERA panel.

IT IS THEREFORE RECOMMENDED THAT the Board approve the following physician to the LACERA Panel of Physicians for the purpose of examining disability retirement applicants.

FRANK GUELLICH, M.D. - Board Certified Orthopedist

Attachments

VG:RC/mb



October 23, 2017

TO: Disability Procedures & Services Committee
Vivian H. Gray, Chair
Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

FROM: Ricki Contreras, Manager 
Disability Retirement Services

FOR: November 9, 2017, Disability Procedures and Services Committee Meeting

SUBJECT: **CONSIDER APPLICATION OF FRANK GUELICH, M.D., AS A LACERA
PANEL PHYSICIAN**

On August 24, 2017, Debbie Semnanian and Barbara Tuncay interviewed Frank Guellich, M.D., a physician seeking appointment to the LACERA Panel of Examining Physicians.

Attached for your review and consideration are:

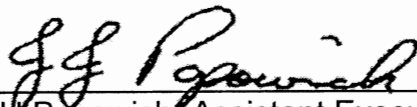
- Staff's Interview Summary and Recommendation
- Panel Physician Application
- Curriculum Vitae
- Sample Report(s)

IT IS THEREFORE RECOMMENDED THAT THE COMMITTEE accept the staff recommendation to submit the application of Frank Guellich, M.D., to the Board of Retirement for approval to the LACERA Panel of Examining Physicians.

Attachments

JJ:RC:mb

NOTED AND REVIEWED:



JJ Popowich, Assistant Executive Officer



October 27, 2017

TO: **Ricki Contreras, Manager**
Disability Retirement Services

FROM: **Debbie Semnanian** *D.S.*
Disability Retirement Specialist Supervisor

SUBJECT: **INTERVIEW OF ORTHOPEDIST APPLYING FOR
LACERA'S PHYSICIAN'S PANEL**

On August 24, 2017, Barbara Tuncay, Acting Supervisor, Disability Retirement Services, and I interviewed **Frank Guellich, M.D.** at his office, which is located at 237 N. Riverside Avenue, Rialto, CA 92376. The office is located in a former one-story residence in a mixed residential/commercial area with free parking behind the building and on the street in front of the office.

Dr. Guellich is a Board Certified orthopedist and has been in private practice for over thirty years. Dr. Guellich's office has four examination rooms. He estimates that 20 percent of his practice is devoted to patient treatment, while the other 80 percent of his time is devoted to IME evaluations for other retirement systems and workers' compensation. Dr. Guellich shares office space with Gabriel Favella, M.D., an internist, and Vinicio Cornejo, D.C.

As referenced in his Curriculum Vitae, Dr. Guellich graduated from New Jersey College of Medicine & Dentistry with his Medical Degree in 1967. He completed an internship at Robert Packer Hospital, Sayre, Pennsylvania, a General Surgery residency at Cooper Hospital in New Jersey, and an orthopedic residency at National Orthopedic and Rehabilitation facility in Arlington, VA. Dr. Guellich completed a Hand Fellowship at Columbia Presbyterian Medical Center in New York. From July 1973 until June 1985, Dr. Guellich served in the U.S. Army at Valley Forge Army Hospital in Phoenixville, PA. He is a Vietnam Veteran and retired military.

The office was clean with ample seating. A handicap accessible restroom is located within the office. Dr. Guellich has an office staff of two office personnel.

Staff reviewed the LACERA Disability Retirement procedures and expectations in its evaluation of County Employees applying for both service connected and non-service connected disability retirements. The importance of preparing impartial and non-discriminatory reports that are clear and concise and address issues of causation and incapacity were discussed with the doctor. He understood that he would adhere strictly to the HIPAA laws that would also apply for LACERA reports.

Staff reviewed with Dr. Guellich the Panel Physician Guidelines for evaluating LACERA applicants and defined the relationship between workers' compensation and disability retirement. Staff discussed the need to rely on his own objective and subjective findings rather than the opinions of previous physician reports and/or comments.

Dr. Guellich agreed to adhere to LACERA's standard of having his evaluation reports sent to us within 30 days of examination. Staff confirmed that Dr. Guellich is agreeable with accepting payment pursuant to LACERA's contract and billing procedures. Dr. Guellich was informed that if he is approved by the Board to be on our panel of physicians, he is required to contact the specialist assigned to the case for approval of any special tests or extraordinary charges. He has also been advised of the requirement to immediately notify LACERA if any license, Board Certification, or insurance coverage is lapsed, suspended or revoked. He was informed that a Quality Control Questionnaire is sent to each applicant regarding their visit.

RECOMMENDATION

Based on our interview and the need for his specialty in this particular geographic location, staff recommends that Dr. Guellich's application be presented to the Board of Retirement for approval as a LACERA Panel Physician.

DS:mb



300 N Lake Ave . Pasadena. CA 91101 ■ Mail to · PO Box 7060, Pasadena, CA 91109-706 626/564-2419 • 800/786-6464

GENERAL INFORMATION		Date <u>02/24/2017</u>	
Group Name: Consultative Examination Services, Inc		Physician Name: Frank Guellich, M D	
I. Primary Address: 725 W Hollyvale Street, Azusa, CA 91702 (mailing and remittance address only)			
Contact Person	Moses Hernandez	Title	Chief Operating Officer
Telephone:	(626) 513-0719	Fax	(626) 513-4095
II. Secondary Address 237 N Riverside Avenue, Rialto CA 92376 (for patient evaluation)			
Contact Person	Moses Hernandez	Title	Chief Operating Officer
Telephone	(626) 513-0415	Fax	(626) 513-4095
PHYSICIAN BACKGROUND			
Field of Specialty	Orthopaedic Surgery	Subspecialty	Hand Surgery
Board Certification	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	License # G53695	Expiration Date 06/30/2018
EXPERIENCE			
Indicate the number of years experience that you have in each category.			
Evaluation Type			
I. Workers' Compensation Evaluations			
<input checked="" type="checkbox"/> Defense	How Long? <u>44 yr.</u>	<input checked="" type="checkbox"/> IME	How Long? <u>44 yr.</u>
<input checked="" type="checkbox"/> Applicant	How Long? <u>24 yr.</u>	<input type="checkbox"/> QME	How Long? _____
<input type="checkbox"/> AME	How Long? _____		
II. <input checked="" type="checkbox"/> Disability Evaluations How Long? <u>44 yr.</u>			
For What Public or Private Organizations? CalPERS, OCERS, ICERS, SBCERA			
Currently Treating? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Time Devoted to:	Treatment	<input type="text" value="20 %"/>	Evaluations <input type="text" value="80 %"/>
Estimated Time from Appointment to Examination		Able to Submit a Final Report in 30 days?	
<input type="checkbox"/> 2 weeks		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<input checked="" type="checkbox"/> 3-4 Weeks			
<input type="checkbox"/> Over a month			
LACERA's Fee Schedule			
Examination and Initial Report by Physician	\$1,500.00 flat fee		
Review of Records by Physician	\$350.00/hour		
Review of Records by Registered Nurse	\$75.00/hour		
Supplemental Report	\$350.00/hour		

CURRICULUM VITAE

Frank G. Guellich, M.D.

Diplomate, American Board of Orthopaedic Surgery

Experience:	09/1961-06/1966	New Jersey College of Medicine & Dentistry Newark, NJ M.D. DEGREE
	07/1966-06/1967	Robert Packer Hospital Sayre, PA INTERNSHIP
	07/1967-06/1968	Cooper Hospital Camden, NJ GENERAL SURGERY RESIDENT
	07/1968-06/1971	National Orthopedic and Rehabilitation Arlington, VA ORTHOPEDIC RESIDENT
	07/1971-06/1973	U.S. Army Valley Forge Army Hospital Phoenixville, PA MAJOR U.S. ARMY-ORTHOPEDIC CARE FOR VIETNAM CASUALTIES
	07/1973-09/1985	Private Practice Hackettstown Adventist Hospital Hackettstown, NJ ATTENDING-PRIVATE PRACTICE
	07/1983-06/1984	Columbia Presbyterian Medical Center New York, NY HAND FELLOWSHIP
	11/1985-11/1992	Medico-Legal Practice California NO LONGER IN BUSINESS
	12/1992 – 12/2010	Columbia University-Harlem Hospital New York, NY ASSISTANT PROFESSOR ORTHOPEDIC SURGERY LEVEL 1 TRAUMA CENTER

Experience:	01/1998-2007	New York Police Department Jamaica-Queens Medical Division DISABILITY EVALUATION FOR INJURED POLICE FORCE MEMBERS
	01/2011-10/2011	During this period of time I went through the processes of obtaining privileges at both Kaiser Permanente and El Camino Hospital in Mountain View, CA
	10/2011-02/2012	Kaiser Permanente Riverside, CA HOSPITAL ORTHOPEDIC CLINIC STAFF
	2012-2013	Master Chef Los Angeles, CA
	2012-Present	Regional Medical Center San Jose, CA ASSISTANT ORTHOPAEDIC SURGERY
	PRIVILEGES	
	04/2013-PRESENT	MSLA, A Medical Corporation Various Locations in CA DISABILITY EVALUATIONS VARIOUS AGENCIES
	08/2015-PRESENT	Mesa Medical Group Garden Grove, CA PRIMARY TREATING PHYSICIAN
Licenses:	1985 - Present	California - Unrestricted
	1992 - Present	New York - Unrestricted
Accomplishments:	2012-2013	Culinary Master Chef Program Los Angeles, CA

Frank Guellich, M.D.
Diplomate, American Board of Orthopaedic Surgery

3675 Ruffin Road, Suite 120
San Diego, CA 92123

Date: XX/XX/XXXX

Sample Report #1

Client

[REDACTED]
[REDACTED]
CLAIMANT: XXXX
ABC Client ID: XXXXX
EMPLOYER: XXXX [REDACTED]
OCCUPATION: Building and Grounds Worker

INDEPENDENT MEDICAL EXAMINATION

As requested by ABC Client, the following is the summary of an Independent Medical Examination as requested by your agency.

IDENTIFYING DATA

The claimant's identity was verified through his photo ID.

SOURCE OF INFORMATION

The source of information was claimant, who was deemed an adequate historian. He drove himself to the examination. Medical records were also submitted and reviewed.

WORK HISTORY

The claimant worked for the XXXX [REDACTED] Worker. He started to work there in XXXX. He cannot remember the month. He last worked on [REDACTED] XXXX.

ALLEGATIONS

The claimant alleges lower back pain due to a work-related injury on [REDACTED] XXXX.

HISTORY OF PRESENT INJURY

The claimant injured his lumbosacral spine at work on [REDACTED] XXXX while trying to load the trash onto a dumpster.

The claimant was seen [REDACTED] on [REDACTED] XXXX for low back pain. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain and the claimant was treated with injection to the lumbosacral spine. He was given modified duty with no lifting over 10 pounds. The claimant was seen in [REDACTED] on [REDACTED] XXXX for low back pain and was treated with an injection. He had an MRI of the lumbosacral spine without contrast. The claimant was seen in [REDACTED] on [REDACTED] XXXX for low back pain. The claimant had modified work with restrictions. The claimant was seen in [REDACTED] on [REDACTED] XXXX for low back pain and had chiropractic care for his low back. The claimant was seen in [REDACTED] on [REDACTED] XXXX for low back pain and was treated with an injection.

The claimant was seen for a Qualified Medical Evaluation by Dr. [REDACTED] on [REDACTED] XXXX. He was diagnosed with degenerative disc disease of L3-L4 and L5-S1 but does not mention if he had an MRI. He mentions that a MRI done on [REDACTED] XXXX showed minimal disc herniation and desiccation of L3-4 and facet arthropathy at L5-S1 with no spinal stenosis.

The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. The claimant was given restrictions of no lifting more than 75 pounds. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. The claimant was given restrictions of no lifting and carrying more than 20 pounds.

The claimant was seen at [REDACTED] on [REDACTED] XXXX. The plan was no work. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. The plan was no work. The claimant was seen in [REDACTED] on [REDACTED] XXXX for low back pain. The plan was not available. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. He had an MRI done on [REDACTED] XXXX at [REDACTED] and on [REDACTED] XXXX. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. There was no plan. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. The plan was P&S. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. The plan was none. The claimant was seen in [REDACTED] on [REDACTED] XXXX for low back pain. There was no plan.

The claimant was seen in [REDACTED] on [REDACTED] XXXX for low back pain. The plan was continuation of medication. There was no mention about modified work. The claimant was seen in [REDACTED] on [REDACTED] XXXX for low back pain. The plan was an epidural injection as recommended. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. The plan was not mentioned.

RE: XXXXXX
Claim No. XXXXX

Page 3 of 21
DOE: XX/XX/XXXX

The claimant was seen at [REDACTED] on [REDACTED], XXXX for low back pain. The plan was repeat epidural injection on the lumbosacral spine. The claimant was seen at [REDACTED] on [REDACTED], XXXX for low back pain. The plan was to repeat epidural injection on the lumbosacral spine. The claimant was seen in [REDACTED] on [REDACTED], XXXX for low back pain. No plan was made. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. There was no plan. The claimant was seen at [REDACTED] on [REDACTED] XXXX for low back pain. The plan was as previously, P&S.

CURRENT COMPLAINTS

The claimant complains of pain on his low back that radiates on left side and he fell on the right side. The pain is increased by lifting over 15 pounds and decreased by standing at least 20 to 30 minutes. It is increased mostly by walking more than three blocks. It is somewhat decreased by rest and by taking ibuprofen. It is somewhat decreased by chiropractic treatment.

PRIOR INJURIES

The claimant had a lumbosacral spine injury on the job in XXXX.

PAST MEDICAL HISTORY

The claimant's past medical history is significant for hypertension.

PAST SURGICAL HISTORY

The claimant had a hernia surgery in XXXX and carpal tunnel surgery on the right in XXXX related to work.

SOCIAL HISTORY

The claimant smokes but denies drinking alcohol.

FAMILY HISTORY

Noncontributory.

MEDICATIONS

The claimant is currently taking Prozac, aspirin 81 mg, gabapentin, ibuprofen, lisinopril, metformin, lorazepam, and naproxen 500 mg.

REVIEW OF MEDICAL RECORDS

- There was an MRI of the lumbosacral spine dated [REDACTED] XXXX which showed facet hypertrophy at L5-S1 and there is no spinal stenosis.
- There are multiple documents that are handwritten notes, duplicates, prescription pad notes, instructions to the claimant from [REDACTED], letters from [REDACTED] to the claimant, and other documents that are non-orthopedic in nature and are not summarized within this document.
- **Job duty statement** received for the occupation of [REDACTED] for the XXXX Unified School District. The claimant was required to occasionally sit stand walk reach above shoulder and below shoulder level, fine manipulate, power grasp, simple grasp and use the hands for repetitive keyboard and mouse use. Claimant was also required to lift 11 to 25 pounds occasionally. Frequently the claimant was required to bend at the neck and waist, twist at the neck and waist. The claimant was never required to run crawl kneel, climb, squat push or pull.

The claimant typical duties would include sweeping, dusting, cleaning, scrubbing, stripping, shielding and waxing polishes, mopping floors in classrooms and similar facilities. He would be required to do the waxing and scrubbing of all facilities as well as operating equipment such as for polishing and scrubbing machines. He would also operate lawnmowers, edgers, weed eaters and power sweepers. He would do duties such as gathering and disposing of rubbish, paper leaves, as well as emptying and washing refuse containers. He would perform a variety of unscheduled custodial duties as requested by the school office and teachers. The job description also notes that part of the duties or special requirements are that he should be able to safely lift and carry items weighing up to 100 pounds. He would also need to safely move heavy supplies, machinery and equipment. Special requirements are also noted as needing stamina to stand and walk for long periods of time.

- The claimant's **retirement application** which was signed on [REDACTED] XXXX shows that he injured himself on [REDACTED] XXXX. He reports pulling a bag of trash and did not expect to be as heavy as it was. He felt something pull on his back. He reports that the limitations are of lifting nothing over 15 pounds, inability to stand, walk or sit for long periods of time.
- [REDACTED] XXXX this is a [REDACTED] report. The claimant was evaluated for back pain. Physical examination showed tenderness and spasm with normal range of motion. Gait was non-antalgic and symmetric. The claimant had full range of motion and neurologically he was intact. Mild spasms were noted. There was tenderness to palpation at the left lower lumbar area. Diagnosis strain of the lumbar region.
- [REDACTED] XXXX this is a [REDACTED] report. The claimant presented with a complaint of an injury to his lower back while he was pulling a bag of trash. The claimant

reported moderate dull achy pain in the left paralumbar area. Radiation to the back of the buttock and the mid-thigh in the posterior area was noted. Pain was increased with lifting heavy objects and decreased with rest. No numbness weakness or paresthesias were reported no bowel or bladder dysfunction was noted. No saddle anesthesia was noted. Physical examination findings included tenderness and spasm with normal range of motion. Gait pattern was non-antalgic and symmetric. He had tenderness to palpation at the left paralumbar areas. Range of motion was normal. Neurologically he was intact. He was placed off work until [REDACTED] XXXX with lifting of no greater than 10 pounds. The diagnosis was strain of the lumbar region.

- [REDACTED] XXXX this is a [REDACTED] report. The patient came in requesting a trigger point injection. Physical therapy has been attended but he still complains of moderate achy pain. Diagnosis was that of a strain of the lumbar region. A trigger point injection was administered without complications. Modified duty was recommended of lifting no more than 10 pounds.
- [REDACTED] XXXX this is a [REDACTED] report. Physical examination findings revealed tenderness and spasm. There was pain at the L5 -S1 and left paralumbar area. There's a positive straight leg raising test on the left. Diagnosis included strain of the lumbar region, lumbar radiculopathy -left, and herniation of the lumbar into vertebral disc, possible at L5 -S1. The claimant was placed on modified duty to lift and carry no more than 10 pounds for the next 2 to 3 months. Given the findings of a positive straight leg raising the physician stated he would order an MRI.
- [REDACTED] XXXX this is a [REDACTED] report. The claimant's physical examination showed tenderness. Normal range of motion. There was pain at the paralumbar area bilaterally at the L5-S1 region. Gait was non-antalgic. Straight leg raising was negative. Diagnosis was strain of the lumbar region.
- [REDACTED] XXXX this is a [REDACTED] report. The claimant was seen for a flare-up. He was given a trigger point injection. Without complications.
- [REDACTED] XXXX this is a [REDACTED] report. The claimant stated he felt much better with chiropractic. This pain has decreased to a 2/10 level. Physical examination noted pain in the left paralumbar area. Otherwise he did exhibit tenderness of the lower back. The rest of his physical examination is normal. Diagnosis was strain of the lumbar region. He was given modified work.
- [REDACTED] XXXX this is a [REDACTED] report. The claimant was noted to have worsening pain from last visit. Physical examination shows tenderness and spasm but normal range of motion. Diagnosis was strain of the lumbar region and bilateral carpal tunnel syndrome, not work related. Physical examination shows gait is non-antalgic. There is pain at the left paralumbar area. No midline pain. No radiation of the pain. Diagnosis is strain of the lumbar region.

- [REDACTED], XXXX this is a [REDACTED] report. The claimant reported numbness in the hands for the last three weeks without pain, paresthesias or weakness. He continued to complain of lower back pain. Physical examination notes a negative Spurling's test. There was tenderness and spasm in the lower back. However normal range of motion. The claimant had positive carpal compression test and phalen's test bilaterally. Diagnoses include strain of the lumbar region and bilateral carpal tunnel syndrome, not work-related.
- [REDACTED], XXXX this is a [REDACTED] report. MRI from [REDACTED], XXXX was reviewed from [REDACTED]. Minimal disc herniation and desiccation at L3 -L4. Facet arthropathy at L5 -S1. No spinal stenosis. The claimant was noted to be improving.
- [REDACTED], XXXX this is a [REDACTED] report. Pain block consultation was denied. Moderate dull achy pain of the left paralumbar area and L4 -L5 midline with no radiation. Physical examination notes tenderness in the low back. Normal range of motion. Otherwise, no tenderness, swelling, edema, deformity, pain or spasm. Neurologically he is overall intact. Gait was normal. Diagnosis was that of a strain of the lumbar region. Chiropractic was recommended.
- [REDACTED], XXXX this is a [REDACTED] report physical examination showed pain in the left paralumbar area. No radiation. No pain at the midline. Diagnosis strain of lumbar region.
- [REDACTED], XXXX this is a [REDACTED] report. The lower back pain is noted to have improved from the previous evaluation. He still had occasional mild dull pain in the left paralumbar area. No radiation of pain. Physical examination showed tenderness of the lower back. Normal range of motion. There was pain at the paralumbar area. No radiation. Diagnosis was strain of the lumbar region. He was returned to full duty.
- [REDACTED], XXXX this is a [REDACTED] report. The claimant is noted to have been full duty prior to this evaluation. Chiropractic treatment was not helping. The claimant wanted a trigger point injection. Diagnosis was noted as a strain of the lumbar region. Trigger point injection was administered without complications.
- [REDACTED], XXXX this is a [REDACTED] report. Physical examination showed pain in the left paralumbar area with no radiation or midline pain. Diagnosis/strain of the lumbar region.
- [REDACTED], XXXX this is a [REDACTED] report. Physical examination shows tenderness of the lower back. Normal range of motion. Pain in the left paralumbar area. No radiation. No midline pain. Diagnosis strain of the lumbar region.
- [REDACTED], XXXX Dr. [REDACTED] M.D. this was a Qualified Medical Evaluation. The diagnosis was lumbar strain and degenerative disc disease of the lumbar spine the L3-L4 and L5-S1 levels.

- [REDACTED], XXXX this is a [REDACTED] report. Physical examination shows pain in the left paralumbar areas with no radiation. No midline pain. Diagnosis was strain of the lumbar region.
- [REDACTED], XXXX this is a [REDACTED] report noting lower back exhibiting tenderness. Normal range of motion. No bony deformities or swelling. There is pain in the left paralumbar areas with no radiation. Diagnoses. Lumbar region strain.
- [REDACTED], XXXX this is a [REDACTED] report. Physical examination findings showed normal gait range of motion of the spine was completely normal. There was tenderness to palpation at the left paralumbar area. No radiation was noted. Lifting trials were performed and the claimant was able to lift the hundred 20 pounds on trial one, hundred 10 pounds on trial two, and 100 pounds on trial number three. Diagnostic results were strain of the lumbar region.
- [REDACTED], XXXX this is a [REDACTED] report. The claimant was examined and gait was normal. Straight leg raising was negative. Sensation, strength and deep tendon reflexes were also normal. Lifting trials were notable for 120 pounds on trial one, 110 pounds and trial two, and 100 pounds. Diagnosis was strain of the lumbar region. Restrictions were given of no lifting more than 75 pounds.
- [REDACTED], XXXX this is a [REDACTED] report. The claimant was seen in physical examination. Findings revealed pain in the left paralumbar area and L5 -S1 midline. Straight leg raising was negative. Diagnosis of a lumbar region strain was given.
- [REDACTED], XXXX this is a [REDACTED] report. The claimant was seen for a flare-up of lower back pain. Physical examination showed tenderness and spasm. Normal range of motion with no bony tenderness, swelling or edema. Normal sensation strength and reflexes were seen. Gait was normal. Straight leg raising test was also negative. Diagnoses strain of the lumbar region and arthropathy of lumbar facet.
- [REDACTED], XXXX this is a [REDACTED] report. The patient reports feeling somewhat better from the last visit. Diagnosis strain of the lumbar region. He was given restrictions of standing as no more than 30 cumulative minutes per hour, no more than six hours per day. Walking has the same restrictions. Bending at the waist was to be done no more than 10 cumulative minutes per hour for no more than two hours per day. Climbing stairs and ladders was prohibited. Lifting and carrying was to be done no more than 20 pounds for no longer than 20 minutes per hour. Pushing and pulling was not to be more than 25 pounds for no longer than 20 minutes per hour. This report was signed by [REDACTED] MD.
- [REDACTED], XXXX this is a [REDACTED] report. A diagnosis of strain of the lumbar region is given. Examination exhibited tenderness. He also had decreased range of motion tenderness and pain. However, the ranges of motion are not documented.

- [REDACTED], XXXX this is a [REDACTED] report. Physical examination showed a positive straight leg raise. Laterality is not indicated nor at what degree. Diagnoses arthropathy of lumbar facet and lumbar radiculopathy.
- [REDACTED], XXXX This is a [REDACTED] report. Interlaminar lumbar epidural steroid injection procedure note. This is a report of a L5 -S1 trans-laminar steroid injection under fluoroscopy. No complications were noted. Physical examination noted tenderness and pain in the lumbar spine. He has normal range of motion. He had an abnormal straight leg raise test which was noted as slightly positive on the left. Gait was antalgic. The assessment was noted as arthropathy of lumbar facet, lumbosacral radiculitis, and disorder of lumbar intervertebral disc.
- [REDACTED], XXXX [REDACTED] report. On physical exam the claimant is noted to have tenderness to palpation at the right and left paralumbar areas. No tenderness over the midline sacrum or sacroiliac joints. Diagnoses are arthropathy of lumbar facet and lumbar radiculopathy.
- [REDACTED], XXXX [REDACTED] report. The claimant was noted to have tenderness to palpation at the right and left paralumbar areas. There were some mild spasms. But no tenderness over the midline, sacrum or sacroiliac joints. Diagnoses include arthropathy of lumbar facet, strain of lumbar region and lumbar radiculopathy.
- [REDACTED], XXXX the claimant suffered a flare-up according to the assessment. He had tenderness to palpation at the right and left paralumbar areas. There were mild muscle spasms. However, there is no tenderness over the midline sacrum or sacroiliac joints.
- [REDACTED], XXXX [REDACTED] report. The claimant is noted to be awaiting epidural #3. It is noted that injection #2 took place on [REDACTED], XXXX. This helped with decreasing pain and increasing function more than 90%. The claimant was diagnosed with lumbar radiculopathy, arthropathy of lumbar facet and strain of the lumbar region. (Whether this is #2 or #3 is in question in light of the [REDACTED], XXXX report where it states the physician is trying to obtain approval for injection #2).
- [REDACTED], XXXX [REDACTED] report. Physical examination shows tenderness to palpation at the right and left paralumbar areas. Some mild spasms were noted. Diagnoses are arthropathy of lumbar facet and lumbar radiculopathy.
- [REDACTED], XXXX [REDACTED] report. This is a PR-2 report. Pain has gotten worse. The claimant has moderate dull achy pain in the left paralumbar area. There is a positive straight leg raising on exam, although the level is unknown. Diagnosis lumbar radiculopathy, arthropathy of lumbar facet and strain of the lumbar region.
- [REDACTED], XXXX [REDACTED] report. Positive straight leg raising was noted on this date. Neurologically he had no weakness and normal reflexes. No sensory deficits. Ranges of motion are not provided. Diagnoses arthropathy of lumbar facet, strain of lumbar region and lumbar radiculopathy. This report was used as an appeal for epidural

steroid injection number two. It was noted that the first injection on [REDACTED] XXXX helped with decreasing pain and increasing function more than 90%. Therefore, the argument is made that he should have one more steroid injection.

- [REDACTED] XXXX [REDACTED] report. This is a PR-2 report noting findings of an MRI of the lumbar spine done at [REDACTED] on [REDACTED], XXXX. The findings were that of minimal disc herniation and desiccation at L3-4. Facet arthropathy at L5-S1. No spinal stenosis. Physical examination shows tenderness and spasm in the lumbar spine. No weakness. Normal reflexes. No sensory deficit. Normal muscle tone. Normal straight leg raise test. Normal gait pattern. Diagnosis was that of lumbar radiculopathy, arthropathy of lumbar facet and strain of the lumbar region. The claimant was noted to be stable.
- [REDACTED] XXXX [REDACTED] History obtained reveals injury from [REDACTED] XXXX to the back. On [REDACTED] XXXX, he was evaluated by a Qualified Medical Evaluator. He was diagnosed with lumbar strain and degenerative disc disease at L3-L4 and L5-S1. Physical examination revealed moderate tenderness at L4-L5. Flexion was 60° and extension 20°. Straight leg raising was 90° on the right and 60° on the left. Positive sciatic notch on the left. Provocative tests are negative. Motor strength is 5/5. Sensation is noted as perhaps slight diminution left at L4 distribution. Deep tendon reflexes were normal. No atrophy is noted with both calves measuring 45 cm. diagnoses are lumbar radiculopathy, arthropathy of lumbar facet, strain of the lumbar region, chronic nonmalignant pain and severe obesity. The physical examination did not reveal evidence of radiculopathy. However the physician states that although there is lack of motor weakness, the patient does have radicular signs and is considered a red flag. He cites the ACOEM guidelines. He therefore requests an MRI.
- [REDACTED] XXXX (Date of receipt) [REDACTED] Physicians Supplementary Certificate signed by [REDACTED] MD. the diagnosis is noted as thoracolumbosacral neuritis and radiculitis. The physician noted that the patient had permanent work restrictions of no lifting over 15 pounds. No return to work date was offered.
- [REDACTED] XXXX [REDACTED] report. The allegations remain the same. Findings on physical examination include moderate tenderness at L4-L5 level. Flexion was to 60° and extension to 0°. Straight leg raising to 90° on the right and 60° on the left. Positive sciatic notch on the left. Provocative tests are negative. Neurologically he is intact except for diminution laterally at L4 to sensation. Diagnoses: severe obesity, lumbar radiculopathy, arthropathy of lumbar facet, and chronic nonmalignant pain.
- [REDACTED] XXXX [REDACTED] report. Physical examination findings of tenderness and spasm in the lower back. Normal range of motion. Normal sensation, strength and reflexes. No weakness. Diagnoses lumbar radiculopathy, arthropathy of lumbar facet and strain of the lumbar region.
- [REDACTED] XXXX [REDACTED] report. Patient is presenting with a diagnosis of lumbar strain and degenerative disc disease at L3-L4 and L5-S1. Physical examination

revealed moderate tenderness at the L4-5 level. There's decreased sensation at L4. Flexion is to 60°, extension 20°. Straight leg raising is 90° on the right and 60 on the left. Positive sciatic notch on the left. Diagnoses include chronic nonmalignant pain, severe obesity, strain of the lumbar region, and deconditioning.

- [REDACTED] report. MRI completed on [REDACTED] XXXX was reviewed and noted to be completely normal. some early degenerative joint disease at the level of L3 – L4 is noted, which is age-appropriate. Diagnoses include chronic nonmalignant pain, severe obesity, strain of the lumbar region, and deconditioning. Strengthening exercises were given and recommended.
- [REDACTED], XXXX [REDACTED] report. Follow-up report regarding moderately severe pain in the lower back with numbness in the toes of both feet. Examination findings revealed moderate tenderness at the L4-L5 level. Flexion is 60°, extension 0°. Straight leg raising is 90° on the right and 60 on the left. There's positive sciatic notch on the left. Provocative tests were negative. Sensation was decreased bilaterally at the L4 level. Sensation and deep tendon reflexes were normal. Diagnoses include chronic nonmalignant pain, strain of the lumbar region, severe obesity, deconditioning. All these were unchanged from previous visits.
- [REDACTED] XXXX [REDACTED] record. The claimant came in with moderately severe pain of the lower back with numbness in the toes of both feet. The numbness becomes more severe with prolonged sitting of over two hours. He had complaints of bilateral hand numbness as well. Physical examination showed pain to palpation and mild palpable tightness in the lumbosacral area. Flexion was to 30°, extension 20°. The claimant complained of pain with all motion. No weakness noted. Neurologically the claimant was intact. Diagnoses include lumbar radiculopathy, arthropathy of the lumbar facet and strain of the lumbar region.
- [REDACTED], XX [REDACTED] record. The claimant was seen for continued lower back pain. Permanent restrictions from heavy lifting were noted. Physical examination revealed moderate tenderness at the L4 and L5 levels. Flexion was 60°, extension 0°, straight leg raising 90° on the right and 60° on the left. Positive sciatic notch on the left. Neurologically sensation is decreased at L4.
- [REDACTED], XXXX [REDACTED] report notes the patient was there for moderately severe pain of the lower back with numbness in the toes on both feet. Physical examination showed moderate tenderness at the L4 L5 level. Flexion was 60°, extension 0°, straight leg raising 90° bilaterally. Provocative tests were negative. Neurologically there was sensory decrease bilaterally at the L4 distribution. Motor strength and reflexes were normal. MRI [REDACTED] XXXX was completely normal with mild early degenerative joint disease of the L3-L4 level which was deemed age-appropriate. Diagnoses were strain of the lumbar region, lumbar radiculopathy, chronic nonmalignant pain, deconditioning and severe obesity.

- [REDACTED] XXXX [REDACTED] record noting lower back pain diagnosed as lumbar strain and degenerative disc disease L3-L4 and L5-S1. This was according to the history. Review of the MRI dated [REDACTED], XXXX was completely normal. Mild early degenerative joint disease was seen at L3-L4. However, this is noted as age appropriate. Diagnoses includes arthropathy of lumbar facet, strain of the lumbar region, lumbar radiculopathy, deconditioning and severe obesity.
- [REDACTED] XXXX Initial consultation. Dr. [REDACTED], physical medicine and rehabilitation provider evaluated this claimant for lower back complaints. Examination of the lower back shows 40° of flexion, 10° of extension, and 25° of lateral flexion, right and left. He moves slowly with complaints of generalized lower back pain. There is palpable trigger point with spasm overlying the left greater than right lower musculature. There is discomfort towards buttocks, on the left and right, when palpating the areas. There is tenderness overlying the left sciatic notch and left piriformis musculature. An MRI was reportedly done in XXXX but results were not available. Diagnosis is lumbosacral strain, recent exacerbation of prior permanent and stationary state.
- [REDACTED] XXXX initial consultation. The claimant is seen regarding his lower back injury of [REDACTED], XXXX. It is noted in this document that he denied history of previous injuries to his lower back. Physical examination showed 40° of flexion, 10° of extension and 25° of bilateral lateral flexion. The diagnosis was that of lumbosacral strain, recent exacerbation of prior permanent and stationary state.
- [REDACTED] XXXX Physician progress report. A reevaluation for persistent lower back discomfort associated with a XXXX industrial injury is noted. Physical examination of the lower back shows forward flexion to 45° and extension to 15°. Tenderness with spasm and palpable trigger points overlying the left greater than right lower lumbar muscles. Slightly positive straight leg raising maneuver left greater than right is noted. He continues to flex and extend his lower back in a slow manner. Diagnosis lumbosacral strain, recent exacerbation of prior permanent and stationary state.
- [REDACTED] XXXX Physicians progress report. Physical examination of the lower back shows flexion 45° extension 20°. There are trigger points overlying the left greater than right lower lumbosacral muscles. Palpation radiates discomfort towards both buttocks and posterior thigh. A slightly positive straight leg raising maneuver is noted, left greater than right. Diagnosis is lumbosacral strain, recent exacerbation of prior permanent and stationary state.
- [REDACTED] XXXX Physician progress report. Physical examination shows decreased range of motion in forward flexion to 45° and extension to 20°. Palpable trigger points with spasm overlying the left greater than right lower lumbar musculature. Diagnosis of lumbosacral strain, recent exacerbation of prior permanent and stationary state.
- [REDACTED] XXXX Physician progress report notes lower back discomfort associated with his [REDACTED] XXXX injury. Physical examination of the lower back shows flexion 45° and extension of 20°. Palpable trigger points overlying the bilateral lower back muscle

groups are noted. Palpation over the left lower lumbar area continues to radiate discomfort towards the left buttock. The posterior thigh as well. Minimally positive left-sided straight leg raising maneuver is noted. There is slight tenderness overlying the piriformis musculature and sciatic notch. The left greater than right. A diagnosis of lumbosacral strain is made. It is noted as recent exacerbation of prior permanent and stationary state.

- [REDACTED] XXXX primary treating physician's progress report notes tenderness with findings of tenderness. The diagnosis is noted as lumbosacral strain. The provider's handwritten recommendations are not legible.
- [REDACTED] XXXX Physician's progress report. Physical examination showed flexion of the lower back to 45° and extension of 20°. Palpable trigger points overlying the left greater than right lower lumbar muscles. Continued radiation of discomfort from the lower back towards the left buttock and posterior thigh. Continued slightly positive left-sided straight leg raising maneuver. Diagnosis lumbosacral strain, recent exacerbation of prior permanent and stationary state.
- [REDACTED] XXXX Initial consultation. The claimant was referred by treating physician [REDACTED] MD. Allegation was left greater than right lumbar radiculopathy. Physical examination revealed left greater than right lumbar paraspinal myofascial pain. He is noted to have L5 sensation deficits bilaterally. Ranges of motion are not recorded. Diagnostic testing is noted as a lumbar MRI that appears to be nonsurgical. Diagnosis was discogenic and radicular pain.
- [REDACTED], XXXX the claimant was evaluated for carpal tunnel syndrome with bilateral evidence of carpal tunnel syndrome based on EMG. Right-sided was moderate to severe. Left side was moderate. The claimant appears to have had a right carpal tunnel release on [REDACTED] XXXX. There is also a note of cervical radiculopathy. EMG done in [REDACTED] XXXX showed chronic left seventh cervical nerve roots abnormality. Bilateral fifth and sixth cervical nerve root abnormality. A recommendation for epidural was made at the C6-C7. Cervicalgia is also noted. The claimant has hypertension. The claimant is also noted to have an impaired fasting glucose. Intervertebral disc degeneration is noted. MRI of [REDACTED] XXXX is cited to show C-5 C6 degenerative disc disease with mild to moderate foraminal stenosis bilaterally. An injection was given in [REDACTED] XXXX with some benefit. Lumbago is also noted with the claimant revealing two injuries. The first was in XXXX when he fell working as a [REDACTED] on a wet floor and reporting hitting his head and being evaluated but without any imaging. In XXXX, he was lifting a heavy bag and hurt his back and had a [REDACTED] case with [REDACTED]. He had an MRI and was diagnosed with neuritis. In [REDACTED] XXXX MRI showed mild lumbar spondylosis of L3 through L5. No spinal stenosis or neural foraminal impingement is noted. Major depression is also cited. Lastly obesity is noted. This examination took place at [REDACTED] [REDACTED]. The claimant was evaluated by [REDACTED] MD. a physical examination is not recorded.

- [REDACTED], XXXX physician progress report. Physical examination reveals bilateral lumbar paraspinal myofascial pain. S1 sensation loss with straight leg raise positive bilaterally. L5 sensation loss is also noted. In terms of diagnostic testing, it is stated that the MRI appears nonsurgical. The claimant brought in the images and these are reviewed by the physician who opines that he appears to have spinal stenosis at L4 L5 due to epidural lipomatosis. He states this is a quite obvious finding. Diagnosis is discogenic and radicular pain/spinal stenosis.
- [REDACTED], XXXX - Operative report for bilateral L5 transforaminal epidural steroid injection by [REDACTED]. No complications were noted.
- [REDACTED], XXXX Physician progress report. Physical examination findings show bilateral lumbar paraspinal tenderness and L5 sensation deficits. Ranges of motion are not commented on. Impression: discogenic and radicular pain.
- [REDACTED], XXXX the initial pain management evaluation took place. The mechanism of the injury is reported as having fallen on his back and hitting his head in XXXX while pulling heavy bags. The claimant received physical therapy, acupuncture, x-ray, MRI and CT scan. However, the results are not noted. On physical examination, his gait was not antalgic. He was able to do heel to toe and toe to heel walk. Lumbar spine examination showed tenderness to palpation over the lumbar spine muscles. Diffuse reduction to sensation in the lower extremities to light touch are noted. However, no specific distribution is noted. Approximately 4/5 left and 5/5 right dorsiflexion are noted. There is an absent left patellar tendon reflex. Range of motion is reduced in all planes although no ranges are provided. Assessment is noted as lumbar radiculopathy and obesity. Recommendation for epidural steroid injection is made.
- [REDACTED], XXXX This is an incomplete report starting at page 2 noting diagnostic testing of nonsurgical MRI. However, no results are dictated into this report. The impression is discogenic and radicular pain. This report was signed by Dr. [REDACTED].
- [REDACTED], XXXX physician progress report knows that the claimant has not improved significantly physical examination shows tenderness over the lower back muscles, diffuse reductions in sensation in the lower extremities to light touch, 4/5 left and 5/5 right dorsiflexion, and an absent reflex of the left patella. Diagnoses are lumbar radiculopathy and obesity. The provider uses this report to appeal a utilization review denial.
- [REDACTED], XXXX PR-2 report notes a finding of positive straight leg raising although laterality is not known. A diagnosis of lumbar radiculopathy is made. Recommendation of bilateral L5 steroid injection is made. This report is signed by Dr. [REDACTED].
- [REDACTED], XXXX physician's progress report the claimant reports sciatica. This is worsened with walking and standing and is made better with sitting and resting. Physical examination reveals tenderness to palpation over the lower back muscles, diffuse reduction to sensation in the lower extremities to light touch, approximately 4/5 left and

5/5 right dorsiflexion, absent left patellar tendon reflex and decreased range of motion. Diagnoses include lumbar radiculopathy, obesity and diabetes. The physician is recommending repeat steroid injection.

- [REDACTED] XXXX Physician progress report noting improvement but slower than expected. Physical examination showed tenderness to palpation over the lower back muscles. Diffuse reduction in sensation in the lower extremities to light touch. Approximately 4/5 left and 5/5 right dorsiflexion. Left deep tendon reflexes are absent at the patellar tendon. Decreased range of motion of the lumbar spine is noted although no ranges are provided. Diagnoses are that of lumbar radiculopathy, obesity and diabetes. The plan was to have an L5 transforaminal epidural steroid injection scheduled for [REDACTED] XXXX. Refills of medications were provided. On the same day, the claimant completed an updated history form noting that he has neck pain and that both legs felt numb. He also complained of numbness in the hands.
- [REDACTED] XXXX physician progress report noting a worsening of symptoms with the pain score of 8/10. Physical examination showed tenderness to palpation over the lower back muscles. Diffuse reduction in sensation in the lower extremities to light touch. 4/5 left and 5/5 right dorsiflexion. Absent left patellar tendon reflex. Range of motion is decreased. However, range of motion is not noted. Diagnoses include lumbar radiculopathy obesity and diabetes. The claimant agreed to move forward with repeat epidural of the bilateral L5 level.
- [REDACTED] XXXX work status report noting a diagnosis of lumbago and neuralgia/neuritis NOS.
- [REDACTED] XXXX [REDACTED] MD - Transforaminal epidural steroid injection bilaterally at L5. No complications are noted.
- [REDACTED] XXXX Physician's progress report notes continued improvement but slower than expected of the sciatica. Physical examination has similar findings to all the other reports from [REDACTED]. Diagnosis includes lumbar radiculopathy, obesity and diabetes. The plan was to request an epidural injection.
- [REDACTED] XXXX a physician progress report notes continued complaints of sciatica with physical examination findings of tenderness to palpation in the lower back muscles, reduction in sensation in the lower extremities to light touch, 4/5 Left dorsiflexion strength, and an absent left patellar reflex. Range of motion was also reduced in all planes. Diagnoses are lumbar radiculopathy, obesity and diabetes.
- [REDACTED] XXXX [REDACTED] MD - Transforaminal epidural steroid injection bilateral at L5. This was done for radiculopathy. The indication notes that there has been failure to conservative therapy. Physical examination is overall normal, although no back exam is documented. No complications were noted.

- [REDACTED], XXXX This is a [REDACTED] Client form. [REDACTED] Request notes a claim for lower back accepted on [REDACTED] XXXX. Settlement for [REDACTED] award is noted. Dr. [REDACTED] is noted as the examining physician. This document was signed by [REDACTED] on [REDACTED], XXXX.
- [REDACTED] XXXX physician's progress report noting that the patient had improved. However, the claimant still had sciatica at a 7/10 level of severity. Physical examination showed tenderness to palpation over the lumbosacral muscles. There was diffuse sensation decrease in lower extremities to light touch. Left tendon reflex in the patellar tendon is absent and 1+ on the right. Range of motion is reduced in all planes due to pain. Diagnosis lumbar radiculopathy, obesity and diabetes.
- [REDACTED] XXXX PR-2 report noting decreased pain in the bilateral lower extremities. There was decreased range of motion on exam. However, the ranges of motion are not documented. Diagnosis is lumbosacral radiculopathy.
- [REDACTED] XXXX Physician report on disability notes a diagnosis of lumbar radiculopathy with increased pain when standing. Restrictions of no lifting over 15 pounds is noted. Incapacity is reported as permanent. This report is signed by Dr. [REDACTED] He is a pain medicine doctor.
- [REDACTED], XXXX Physical Capacities Evaluation form completed noting the claimant can only sit, stand and walk for three hours at one time and for three hours total in an eight-hour day. He was noted as never able to lift 11 to 20 pounds. Occasional bending and crawling. Never squatting and climbing. The form also gives restrictions of never working at unprotected heights, being around moving machinery, or driving automotive equipment. There are mild restrictions noted for exposing himself to changes in temperature and humidity and in exposure to dust, fumes and gases.
- [REDACTED] XXXX physician's progress report by [REDACTED] MD. The claimant notes sciatica is made worse with walking or standing. It is improved with sitting and resting. The pain is sharp and burning. Pins and needles, numbness and tingling are reported. Pain level is noted as 8/10. Lower back examination noted tenderness to palpation over the lower back muscles. There's diffuse reduction in sensation in the lower extremities to light touch. 4/5 Left and 5/5 rights dorsiflexion is noted. Left deep tendon reflex of the patella is absent. On the right, it is 1+. Decreased range of motion in all planes due to pain. Diagnoses include lumbar radiculopathy, obesity and diabetes.
- [REDACTED] XXXX primary treating physician progress report by Dr. [REDACTED] notes subjective complaints of decreased pain in the right and left lower extremities. Objective findings include increased range of motion. Diagnosis includes lumbosacral radiculopathy. The actual ranges of motion are not documented.
- [REDACTED] XXXX physician progress report by [REDACTED] MD the claimant is noted to have tenderness to palpation over the lumbar spine. There is decreased sensation in the lower extremities to light touch. 4/5 left end 5/5 right dorsiflexion. Left deep tendon

reflexes of the patellar tendon is absent. 1+ on the right. Range of motion reduced in all planes. Diagnoses include lumbar radiculopathy, obesity and diabetes.

- [REDACTED], XXXX examination by Dr. [REDACTED] notes sciatica as the subjective complaint, decreased range of motion as the objective finding and a diagnosis of lumbosacral radiculopathy. Medications were recommended. No discharge status.
- [REDACTED], XXXX PR-2 report by Dr. [REDACTED] notes the claimant's work status continues the prior permanent and stationary status. Follow-up is recommended. Lumbar support brace is also ordered.
- [REDACTED], XXXX The claimant completed a patient updated history form noting that there is constant pain. He rates his pain at nine. He states that everything hurts when asked what activities or position made the pain worse. He did not note anything alleviating the pain.
- [REDACTED], XXXX [REDACTED] MD this is a physician's progress report noting that the patient had improved but slower than expected. Physical examination noted antalgic gait pattern. He had tenderness to palpation over the lumbar facets in the paraspinal musculature. Approximately 4/5 left and 5/5 right dorsiflexion. Range of motion was reduced in all planes of the lumbar spine due to pain. Diagnosis is noted as lumbar radiculopathy, obesity and diabetes.
- [REDACTED], XXXX patient was seen by Dr. [REDACTED] for sciatica. Decreased range of motion was found on exam. Lumbosacral radiculopathy was diagnosed with a tens unit being requested.
- [REDACTED], XXXX work status report by Dr. [REDACTED] notes improved but slower than expected. A physical exam is not summarized.
- [REDACTED], XXXX [REDACTED] MD this is a report of a transforaminal epidural steroid injection bilateral at L5.
- [REDACTED], XXXX [REDACTED] MD this is a history and physical. The claimant was seen for lower back complaints. No respiratory, gastrointestinal or cardiovascular issues are noted. Physical examination appears to be normal. However, no back examination is documented.
- [REDACTED], XXXX Work status report from [REDACTED] Medical Group. This report shows the patient was discharged as permanent and stationary. The name of the treating provider is known as [REDACTED] MD.

End of record review.

RE: XXXXXX
Claim No. XXXXX

Page 17 of 21
DOE: XX/XX/XXXX

PHYSICAL EXAMINATION

GENERAL

Claimant is a male, who was cooperative with the exam. He was able to follow commands.

LUMBOSACRAL SPINE EXAMINATION

He can flex to 50 degrees, extend to 10 degrees, bend to 20 degrees, and rotate to 20 degrees with pain. He has tenderness on the left side.

Motor power in the lower extremities is 5/5.
Sensation to touch is 1+ in the lower extremities.
Reflexes in the lower extremities, knees, and ankles are 1+.
Bilateral straight-leg raising is negative, sitting and supine.

GAIT

Gait is normal.

LOWER EXTREMITY RANGES OF MOTION - BILATERAL:

Hips:

Abduction:	40 degrees
Adduction:	20 degrees
Flexion:	90 degrees
Extension:	30 degrees
External rotation:	40 degrees
Internal rotation:	40 degrees

Knee:

Flexion:	130 degrees
Extension:	0 degrees

Ankle

Dorsiflexion:	20 degrees
Plantar Flexion:	40 degrees

Foot

Inversion:	30 degrees
Eversion:	30 degrees

Leg Lengths

RE: **XXXXXX**
Claim No. **XXXXX**

Page **18 of 21**
DOE: **XX/XX/XXXX**

There is no leg-length discrepancy.

RE: XXXXXX
Claim No. XXXXX

Page 19 of 21
DOE: XX/XX/XXXX

DIAGNOSTIC TESTS

None obtained.

DIAGNOSES

1. Lumbosacral spine mild ligamentous strain.
2. Lumbosacral spine facet hypertrophy in L5 and S1.
3. Diabetes Mellitus.
4. Overweight.
5. Hypertension.

DISCUSSION

The claimant injured his lumbosacral spine on [REDACTED] XXXX at work while lifting [REDACTED]. He had an MRI report of the lumbosacral spine. He had treatment but with minimal benefits. There were no surgeries done. He had six epidural injections, chiropractic treatment, and acupuncture with some benefits. He also had physical therapy with minimal benefits. He had no nerve conduction or EMG studies of his extremities. He has not returned to work and has remained symptomatic in his low back.

Today's physical examination reveals that the lumbosacral spine is abnormal. The normal flexion is 60 degrees, he has 50 degrees. The normal extension is 30 degrees, he has 10 degrees. Lateral bending is normal at 30 degrees, he has 20 degrees. Rotation is normal at 30 degrees, he has 20 degrees. All motions are with pain.

An MRI report of the lumbosacral spine done at [REDACTED] on [REDACTED] XXXX showed L3-L4 minimal disc desiccation and herniation and L5-S1 facet hypertrophy with no spinal stenosis.

JOB DESCRIPTION

The claimant worked as a [REDACTED] for the XXXX [REDACTED]. He sweeps, dusts, cleans, scrubs, sweeps, waxes, and mops all the classrooms, kitchen, dining hall, and restrooms.

He was responsible for the walls, woodwork, furniture and fixtures, shelves and boards.

He operates equipment such as floor polishers, a scrubbing machine, a washing machine, steaming and shampoo, vacuum cleaners, lawn mowers and lawn edgers. He sweeps the halls and tennis courts, school yard, playground and parkway. He moves and adjust chairs, desks, tables and other furniture.

RE: XXXXXX
Claim No. XXXXX

Page 20 of 21
DOE: XX/XX/XXXX

He changes water from the compressor tank. He checks and maintains oil levels of the air compressors. He gathers and disposes rubbish bins. He empties and washes the containers.

ANSWERS TO SPECIFIC QUESTIONS

Your cover letter requested that specific questions be answered as part of this report. Below are the questions, followed by the answers.

1. Based on your objective findings, are there specific job duties that you feel the member is unable to perform because of a physical or mental condition? If so, please explain in detail for each disabling condition.

Based on physical examination and MRI, the claimant is unable to do the job as required. He is unable to operate equipment such as floor polishers and scrubbing machines, steaming and shampoo machines and vacuum cleaners. He is unable to sweep and clean halls, tennis courts, school yards, playground and parkways. He is unable to move and adjust chairs, desks, tables and other furniture to prepare the room for a meeting. He is unable to check and maintain the oil level of the air compressor. He is unable to gather and dispose the rubbish properly. He is unable to operate power and pressure heating. He is unable to safely lift and carry items weighing more than 100 lbs. He is unable to move heavy machineries and equipment.

The claimant is unable to do occasional sitting because of low back pain. He is unable to do occasional standing. He is unable to do twisting in his waist. He is unable to carry up to 100 pounds.

2. In your professional opinion, is the member presently, substantially incapacitated for the performance of his duties?

Yes.

- a. If yes, on what date did the disability begin?

The claimant's disability started on ~~October~~, XXXX.

- b. If incapacitated, is the incapacity permanent or temporary?

The incapacity is permanent. Mr. Claimant cannot reverse or change the physical examination of the lumbar spine.

RE: XXXXXX
Claim No. XXXXX

Page 21 of 21
DOE: XX/XX/XXXX

3. Is the member cooperating with the examination and putting forth their best effort, or do you feel there is exaggeration of complaints?

I felt the claimant cooperated and put his best effort during the examination. I did not feel he was exaggerating his complaints.

This concludes my evaluation of this claimant. If you have any further questions, please do not hesitate to contact me.

Sincerely,

_____, M.D.
American Board of Orthopaedic Surgery

Frank Guellich, M.D.
Diplomate, American Board of Orthopaedic Surgery
1816 Tully Road, Suite 235
San Jose, CA 95122

Date: [REDACTED]

Sample Report #2

XXXXXX
[REDACTED]
[REDACTED]

CLAIMANT: XXXXX, XXXX
XXXXXX ID: 0000000000
EMPLOYER: [REDACTED]
XXXXXX
OCCUPATION: XXXX [REDACTED]

INDEPENDENT MEDICAL EXAMINATION

As requested by XXXXXX, the following is the summary of an Independent Medical Examination as requested by your agency.

IDENTIFYING DATA

The claimant's identity was verified through her photo ID.

SOURCE OF INFORMATION

The source of information was claimant, who was deemed an adequate historian. Medical records were also submitted and reviewed.

WORK HISTORY

The claimant worked as a [REDACTED]. She started to work on [REDACTED]. The last day she worked was in [REDACTED].

ALLEGATIONS

The claimant has a right wrist problem.

HISTORY OF PRESENT INJURY

The claimant had a gradual onset of right wrist pain with numbness to the right hand and wrist approximately in 2013. She had no specific injury to the right hand or wrist. She worked many years working with computers and files in computers. She was seen at Kaiser Permanente in 2013 in [REDACTED] for right wrist and right hand pain and numbness. She was given a prescription of anti-inflammatory medication of naproxen as well as started on occupational therapy in approximately [REDACTED]. She does not remember the exact date. She was next seen by a private doctor, Dr. [REDACTED] an orthopaedic hand surgeon in [REDACTED]. Dr. [REDACTED] performed a surgery for the right wrist approximately in [REDACTED]. She next had 12-14 weeks of physical or occupational therapy (she is not sure) on the right wrist and on the right hand with minimal benefit. She was then seen by Dr. [REDACTED] in [REDACTED].

Dr. [REDACTED] ordered a wrist MR with no contrast. She next had a ganglion removed on the right wrist. She had nerve release at the mid forearm at the dorsum but does not know exactly what that was. She then saw a physical therapist in [REDACTED] twice a week for eight weeks. She still sees Dr. [REDACTED] at the present for possible carpal tunnel syndrome.

She also has been seeing Dr. [REDACTED] since [REDACTED]. She is supposed to have an EMG and a nerve conduction but it has not been approved by [REDACTED].

CURRENT COMPLAINTS

The claimant has constant pain in the right wrist. She has numbness and tingling in all four fingers and of the thumb. She takes Advil, ibuprofen with some benefit for the pain and numbness. She has difficulty even washing her hand or drying her hair. Currently, she had her hair short.

PRIOR INJURIES

None known.

PAST MEDICAL HISTORY

The claimant was treated for thyroid nodules. She has hypothyroidism. She has also been treated for anxiety and depression.

PAST SURGICAL HISTORY

The claimant had thyroid nodules biopsy surgery in [REDACTED] but no tumor. She had a deviated septum operated in [REDACTED].

RE: XXXXX, XXXX
CalPERS No. 0000000000

Page 3 of 37
DOE: [REDACTED]

SOCIAL HISTORY

The claimant denies smoking or alcohol intake.

FAMILY HISTORY

The claimant is single and has [REDACTED] children, ages [REDACTED].

MEDICATIONS

The claimant is currently taking venlafaxine, levothyroxine, losartan, and amlodipine.

REVIEW OF MEDICAL RECORDS

An MRI was reviewed. The summary of the large volume of medical records is summarized at the end of this report.

PHYSICAL EXAMINATION

GENERAL

The claimant is a female, who was cooperative with the exam. She was able to follow commands. The physical examination was done with a chaperone present.

UPPER EXTREMITIES - MEASUREMENTS

Measured 7 cm above the olecranon:

Right: 32 cm.

Left: 32 cm.

Measured 12 cm below the olecranon:

Right: 24 cm.

Left: 24.5 cm.

CERVICAL SPINE EXAMINATION

She can flex to 40 degrees, extend to 50 degrees, bend to 40 degrees, and rotate to 40 degrees.

Motor power in the upper extremities is 5/5.

Sensation to touch is 1+ upper extremities.

GAIT

Gait is normal.

UPPER EXTREMITIES - RANGE OF MOTION

Bilateral shoulders:

Abduction: 140 degrees
Adduction: 30 degrees
Flexion: 140 degrees
Extension: 30 degrees
External rotation: 30 degrees
Internal rotation: 30 degrees

Bilateral elbows:

Flexion: 140 degrees
Extension: 0 degrees

Bilateral forearms:

Pronation: 30 degrees
Supination: 30 degrees

Right wrist:

Flexion: 30 degrees
Extension: 60 degrees
Radial deviation: 20 degrees
Ulnar deviation: 30 degrees

Left wrist:

Flexion: 60 degrees
Extension: 60 degrees
Radial deviation: 20 degrees
Ulnar deviation: 30 degrees

Right wrist:

Flexion: 30 degrees
Extension: 40 degrees
Radial deviation: 20 degrees
Ulnar deviation: 20 degrees

Right hand:

The claimant is able to make a full fist.
Tinel's sign is positive.

Phalen's test is cannot be fully appreciated because she has limited flexion of the right wrist.

Thumb opposition is good.

Finger motion is good.

Atrophy: None.

Left hand:

The claimant is able to make a full fist.

Tinel's sign is negative.

Phalen's test is negative.

Thumb opposition is good.

Finger motion is good.

Atrophy: None.

DIAGNOSES

1. Right wrist pain status post ganglion and cyst removal at the dorsum of the right wrist.
2. Post De Quervain's release of the right wrist.
3. Most probable carpal tunnel syndrome on the right.
4. Overuse syndrome of the right wrist and right hand.
5. Right hand tendinitis.
6. Anxiety and depression, by history. This is deferred to the appropriate specialist for confirmation and opinion.

DISCUSSION

The claimant has had a gradual onset of pain and numbness in her right hand and right wrist since [REDACTED]. She had no specific injury to the right hand and wrist. She presented with MRI of the right wrist with no contrast. She had right wrist surgeries including De Quervain's release, fourth compartment ganglion and cyst removal. She remains symptomatic in the right hand and wrist with numbness and tingling in all four fingers and the thumb. She has an EMG and nerve conduction of the right upper extremity pending but not approved at the present time.

Objective Findings:

The claimant was affected most probably with carpal tunnel syndrome, overuse syndrome, right hand and tendinitis of the right hand. Normal flexion is 60 degrees but she has 30 degrees. She also has a positive Tinel's sign in the right wrist.

Job Description/Job Analysis:

Type of Retirement: Industrial Disability Retirement

Occupation: XXXX [REDACTED]

Employer: [REDACTED]

Physical Requirements of Position/Occupational Title: The claimant is never required to run, crawl, kneel, climb, squat, bend at the waist, push or pull, lift/carry 11-100+ pounds, work with heavy equipment, be exposed to excessive noise, be exposed to extreme temperatures, humidity or wetness, work at heights, operation of foot controls or repetitive movement, use special visual or auditory protective equipment, or work with biohazards. The claimant is occasionally (up to 3 hours) required to stand, reach above and below shoulder, power grasp, simple grasp, lift/carry 0-10 pounds, drive, and be exposed to dust, gas, fumes and chemicals. The claimant is frequently (3-6 hours) required to sit, walk, bend neck and waist, perform fine manipulation, perform repetitive use of the hands, keyboard use, mouse use, and walk on uneven ground.

DIAGNOSTIC TESTS

The claimant had EMG and nerve conduction in [REDACTED] which was supposed to be normal.

ANSWERS TO SPECIFIC QUESTIONS

Your cover letter requested that specific questions be answered as part of this report. Below are the questions, followed by the answers.

1. Based on your objective findings, are there specific job duties that you feel the member is unable to perform because of a physical or mental condition? If so, please explain in detail for each disabling condition.

Yes, she is not able to do the repetitive use of her hand required by her job. She is unable to do keyboarding and unable to use a mouse on the computer.

2. In your professional opinion, is the member presently substantially incapacitated for the performance of his/her duties? Please explain in detail.

Yes, the member is substantially incapacitated. As explained above, she will not be able to perform the repetitive duties required of her job as they pertain to the hands. She also is unable to perform keyboarding or use of the mouse required by her position.

- a. If yes, on what date did the Disability begin?

The Disability began on the last day she worked in [REDACTED].

- b. If incapacitated, is the incapacity permanent or temporary?

RE: XXXXX, XXXX
CalPERS No. 0000000000

Page 7 of 37
DOE: [REDACTED]

This is permanent. She will not have reversal of the overuse syndrome. At current, she most probably has carpal tunnel syndrome and this will not reverse.

3. Is the member cooperating with the examination and putting forth their best effort, or do you feel there is exaggeration of complaints?

She is cooperating with the examination. No exaggeration was noted and I felt she gave her best effort.

4. Is the condition caused, aggravated or accelerated by their employment? Would these complaints be present if the claimant had not been employed in this job?

The condition was caused by the employment. In my professional orthopaedic opinion, they would not be present if she had not been employed in this job.

This concludes my evaluation of this claimant. If you have any further questions, please do not hesitate to contact me.

Sincerely,

[REDACTED] M.D.
American Board of Orthopaedic Surgery
[REDACTED]

Medical Record Review

[REDACTED] M.D. - Doctor's First Report of Occupational Injury or Illness – Date of injury is [REDACTED], while at work. Subjectively the claimant notes that repetitive use of the keyboard, major job activities while working on the computer, and keyboard issues.

Objectively the claimant is in some distress over her symptoms, hitchhiker signs, tender over the 1st dorsal compartment, and Finkelstein signs.

The diagnoses include (1) de Quervain's tenosynovitis and (2) sprain/strain of the elbow and shoulder.

The treatment rendered include a thumb Spica splint, ibuprofen, and request ergonomic evaluation of work stations. Work status is modified duty from [REDACTED] to [REDACTED].

[REDACTED] M.D. – [REDACTED], Work Status Report – The claimant is placed off work from [REDACTED] through [REDACTED].

[REDACTED] NP – [REDACTED], Industrial Work Status Report – The claimant is placed on modified activity from [REDACTED] to [REDACTED].

[REDACTED], M.D. State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – The claimant is wearing a thumb Spica splint, using ibuprofen as needed, awaiting an ergonomic workstation evaluation, and working modified duty.

Objectively the claimant has right elbow tenderness to palpation over the lateral epicondyle and extensor surface of the forearm. She has tenderness to palpation along the radial side. Positive Finkelstein's test.

Diagnoses include (1) de Quervain's tenosynovitis and (2) sprain/strain elbow and shoulder.

The claimant's treatment plan includes continuing the thumb Spica, awaiting physical therapy approval, HEP, and ergonomic workstation evaluation.

[REDACTED] PT – Plan of Care Note – The claimant's treatment goals include to be able to perform computer related tasks including using the keyboard and mouse and to be able to write for 10-minutes in the next six weeks. Treatment is to include manual therapy techniques, therapeutic exercise, functional activity training, and home program education.

The assessment is right tendonitis, de Quervain's and tendinitis of the right wrist.

[REDACTED], return to work coordinator – Memorandum – The claimant is placed on limited duty effective [REDACTED] to [REDACTED] with an anticipated return to full duty on [REDACTED]. Limited duty to include no forceful pushing, pulling or grasping with right shoulder be able to take a 15-minute break from repetitive activities.

[REDACTED], NP – [REDACTED], Industrial Work Status Report – The diagnosis is tendonitis, de Quervain's. The claimant is to return to full capacity on [REDACTED].

[REDACTED], M.D. – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – The claimant complains of persisting pain over the radial side of the right wrist. She is wearing a Spica splint.

Objectively the claimant has right elbow tenderness to palpation over the lateral epicondyle and extensor surface of the right forearm and wrist.

The diagnoses include (1) de Quervain's tenosynovitis and (2) sprain/strain of elbow and shoulder.

The treatment plan includes continue thumb Spica, continue physical therapy, await ergonomic evaluation, and return to full duty on [REDACTED].

[REDACTED], M.D. – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – The claimant reports increasing pain in the radial side of the right wrist, wearing a Spica splint, and using ibuprofen as needed.

Objectively the claimant has right upper extremity tenderness to palpation over the lateral epicondyle and extensor surface of the forearm. Tenderness to palpation along the radial side with STS.

The diagnoses include (1) de Quervain's tenosynovitis and (2) sprain/strain of elbow and shoulder.

The treatment plan includes referral to Dr. [REDACTED] for a cortisone injection.

She is to continue the thumb Spica, continue physical therapy, and ergonomic evaluation. Work status is full duty with a return to clinic on [REDACTED].

[REDACTED], M.D. – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – Subjectively the claimant complains of increased pain and she feels she is unable to return to work. She has an ergonomic evaluation on [REDACTED] and is working full time.

Objectively the claimant has right upper extremity tenderness to palpation over lateral epicondyle and extensor surface of forearm. She has STS radial side along the APL.

The diagnoses include (1) de Quervain's tenosynovitis and (2) sprain/strain of elbow and shoulder.

Her treatment plan includes a referral to Dr. [REDACTED] for cortisone injection, continue thumb Spica, physical therapy per plan of care, and ergonomic workspace evaluation. The claimant is to be off work on [REDACTED] and return to full duty on [REDACTED].

[REDACTED], NP. – [REDACTED] Industrial Work Status Report –

Diagnosis includes tendonitis, de Quervain's. The claimant is placed off work on [REDACTED] to return to full duty on [REDACTED]

[REDACTED] M.D. – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – Subjectively the claimant complains of increasing pain. The claimant had an injection on [REDACTED] and is working full duty.

Objectively the claimant has right wrist tenderness to palpation and STS on the radial side along APL.

The diagnoses included (1) de Quervain's tenosynovitis and (2) sprain/strain of elbow and shoulder.

Her treatment plan is to continue thumb Spica, physical therapy per plan of care, Full duty on [REDACTED] with a return visit on [REDACTED]

[REDACTED], PT – PT Progress Note – Referring diagnoses include right tendonitis, de Quervain's and tendinitis of wrist. Treatment goals are that she will be able to perform computer related tasks including using the keyboard and mouse in six weeks. Treatment is to include manual therapy techniques, therapeutic exercise, functional activity training, and home program education.

[REDACTED], M.D. - [REDACTED], Consultative Evaluation and Opinion – The primary diagnosis is de Quervain's tenosynovitis with a secondary diagnosis of sprain/strain of elbow and shoulder. The claimant's job involves lots of keyboarding, etc. The claimant has pain in the radial aspect of her right wrist and some dysesthesias into the radial dorsal side of the hand. She has pain with resistance to thumb extension. The claimant has right radial wrist tendinitis and after discussion with the claimant she had a steroid injection.

[REDACTED], M.D. – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – The claimant reports having difficulty working regular duty due to pain on radial side of wrist. She is wearing splints. She is awaiting adjustments and equipment from an ergonomic evaluation.

Objectively the claimant has tenderness to palpation and mild STS.

The diagnoses included (1) de Quervain's tenosynovitis and (2) sprain/strain of the elbow and shoulder.

The treatment plan included cortisone injection, continue thumb Spica, follow up with Dr. [REDACTED] physical therapy, and modified work status from [REDACTED] to [REDACTED]

[REDACTED] M.D. State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – The claimant reports increased pain in the right radial wrist. Dr. [REDACTED] recommended surgery. She is having difficulty working modified duty with current restrictions. She is wearing a splint and is requesting medication refills.

Objectively the claimant has tenderness to palpation and mild STS on the radial side along APL and tenderness of the anterior shoulder. She has a positive Finkelstein's test.

Diagnoses include (1) DeQuervain's tenosynovitis and (2) sprain/strain of the elbow and shoulder.

The treatment plan is to continue the thumb Spica, request authorization of surgery for right radial wrist tenosynovectomy, request individualized physical therapy, counseling evaluation, and a HEP. She is to return to work on modified duty from [REDACTED] through [REDACTED] due to pain. Follow up on [REDACTED]

[REDACTED] [REDACTED], M.D. - [REDACTED] Medical Group, Inc., Primary Treating Physician's Progress Report - Subjectively the claimant has right wrist burning sensation that awakens her at night with numbness, tingling, and pain.

The examination reveals a positive Finkelstein's sign on the right.

The diagnosis is right de Quervain's disease, active.

Dr. [REDACTED] feels that the claimant needs a DeQuervain's release of the right wrist. The claimant is able to continue working with modifications and would like to proceed with the surgery. Follow-up in two weeks.

[REDACTED] [REDACTED], M.D. - [REDACTED] Medical Group, Inc., Primary Treating Physician's Progress Report - Subjectively the claimant has right wrist burning sensation that awakens her at night with numbness, tingling, and pain.

The examination reveals a very positive Finkelstein's test with a mobile cyst over the 1st dorsal compartment.

The diagnosis is right de Quervain's disease, active.

The plan is that the claimant needs a 1st compartment release of the right wrist and the claimant agrees.

[REDACTED] [REDACTED], M.D. - [REDACTED] Surgery Center, Surgical Note - The preoperative and postoperative diagnosis was DeQuervain's tenosynovitis, right wrist. The operation performed was a release of first dorsal compartment, multiple compartments, right wrist.

It is noted that the claimant tolerated the procedure well and was taken to the recovery room in good condition.

[REDACTED] [REDACTED], M.D. - [REDACTED] Medical Group, Inc., Primary Treating Physician's Progress Report - Subjectively the claimant has right wrist burning sensation that awakens her at night with numbness, tingling, and pain.

The examination reveals that she is healing well.

The diagnosis is right de Quervain's disease, active.

The plan is to have sutures removed in three days, gentle therapy, and follow-up in three weeks.

[REDACTED] M.D. - [REDACTED] Medical Group, Inc., Primary Treating Physician's Progress Report - Subjectively the claimant has right wrist burning sensation that awakens her at night with numbness, tingling, and pain. The examination reveals slight swelling. The diagnosis is right de Quervain's disease, active. The plan is to continue splinting and therapy with a follow-up in 4-6 weeks.

[REDACTED] - [REDACTED] Early Intervention Counseling Report - The claimant described the cumulative activities of her work that caused the injury to her right dominant wrist and shoulder. Dr. [REDACTED] noted that further EIC services may be indicated.

[REDACTED] M.D. - [REDACTED] Medical Group, Inc., Primary Treating Physician's Progress Report - Subjectively the claimant has right wrist burning sensation that awakens her at night with numbness, tingling, and pain. The examination reveals pain poorly localized to the wrist with difficulty sleeping. The diagnosis is right de Quervain's disease, active. The plan is to increase activities, continue strengthening, and Ambien

[REDACTED] M.D. - [REDACTED] Medical Group, Inc., Primary Treating Physician's Progress Report - Subjectively the claimant has right wrist burning sensation that awakens her at night with numbness, tingling, and pain. The examination reveals weakness and stiffness. She has complaints of burning on exam. The diagnosis is right de Quervain's disease, active. The plan is to continue therapy 2x week for 4 weeks for strengthening.

[REDACTED] M.D. - [REDACTED] Medical Group, Inc., Primary Treating Physician's Progress Report - Subjectively the claimant has right wrist burning sensation that awakens her at night with numbness, tingling, and pain. The examination reveals burning and stiffness complaints. The diagnosis is right de Quervain's disease, active. The plan is to continue usual and customary work for four weeks and then re-evaluate.

[REDACTED] - [REDACTED], Inc., [REDACTED] Note - The claimant is seen for de Quervain's release evaluation. She reports that her keyboard was broken and the keys were very stiff, which in turn aggravated her symptoms. Her pain is rated 5/10 to 8/10 with use. Objectively the claimant has right dorsal and radial wrist pain, tingling, numbness, and tightness in the right dorsal forearm and right palm. She had a positive radial tunnel compression intensities with tingling in the right palm and

tightness in the dorsal wrist. Treatment included gentle wrist PROM, STM/releases to right brachioradialis, thenar muscles, extensor and flexor muscles. She is looking for an old brace that she had. Plan is for NHP, CP, paraffin, ultrasound, progressive ROM/strengthening, nerve glides, soft tissue massage, and splinting as needed.

[REDACTED], OTR/L - [REDACTED] Inc., SOAP Note - The claimant reports feeling about the same as last week. Treatment included paraffin with MHP, STM/releases to right forearm, thenar muscles, FOS, POP, FCR, and FCU extensor wad. HEP and composite thumb flexion stretches. The claimant tolerated the treatment well and is to continue with heat, stretches, STM, and strengthening.

[REDACTED] M.D. - Doctor's First Report of Occupational Injury or Illness - The claimant's date of injury is listed as [REDACTED] and the injury is listed to be related to work. The examination involves her right hand and right wrist. pain is described as 5/10, constant, sharp and burning with tingling and numbness from the thenar area to the right thumb and external right forearm. She also has depression and anxiety with fatigue, crying, and anhedonia. She is being treated at [REDACTED] with medications for this, which has helped. She has sleep disturbance with 4 hours of sleep secondary to worries and pain in her right hand and wrist. The right hand and wrist have a healed scar to the radial aspect of the wrist, tenderness over the scar, and positive Finkelstein's tests. The diagnoses include (1) de Quervain's tenosynovitis, (2) right thumb pain, (3) depression, (4) sleep disturbance, and (5) hypertension, nonindustrial. The treatment plan includes HEP, TENS, paraffin bath, depression screening, sleep hygiene, request PT at GGHT, request psychologist and CBT x12, and request orthopedic records. The claimant is off work until her follow up in four weeks.

[REDACTED] OTR/L - [REDACTED] Inc., [REDACTED] Note - The claimant reports now starting to be seen by pain management. Her right hand continues to feel "heavy", tender in the right wrist, and claimant reported pain after strengthening HEP. Objectively the shoulder depression intensifies the heaviness feeling in the right hand with relief on scapular elevation. HEP, corner stretches, and shoulder shrugs are to continue. The claimant tolerated the treatment well and would benefit from proximal strengthening to improve heavy sensation in the right hand. She would benefit from resting and strengthening with HEP. She is to continue proximal strengthening, STM, gentle resume strengthening in right hand/thumb as appropriate.

[REDACTED] PA - [REDACTED] Division of Workers' Compensation, Primary

Treating Physician's Progress Report – The claimant notes right hand and wrist pain that is constant at a level of 6/10 with radiation to the elbow. It is also associated with numbness, burning, and tingling sensations.

On examination, the right wrist surgical scar is well healed on the radial aspect of the wrist. There is decreased ROM to flexion. There is tenderness to palpation near the radial styloid and over the scar.

The diagnoses include (1) right thumb pain, (2) de Quervain's tenosynovitis, (3) sleep disturbance, and (4) depression.

She is to continue conservative care, schedule paraffin treatment, continue PT, request for psychologist and CBT x12 sessions, request psychiatrist evaluation for medication management, and obtain orthopedic records.

[REDACTED] OTR/L – [REDACTED] Inc., Chart Note – The claimant reports right wrist/thumb levels are about the same. Pain at its worst is 5/10 while writing or driving. She has positive Phalen's test and positive radial tunnel compression with right hand symptoms. Treatment included paraffin bath with MHP, STM/releases, foam roller, median nerve glides, PROM and composite thumb flexion. Claimant declined CP. She is to continue HEP. She tolerated the treatment well and is to continue strengthening as tolerated and PROM/stretching.

[REDACTED] M.D. - State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report - The claimant had an ergonomic evaluation on [REDACTED] including a wireless mouse, keyboard, and headset. The claimant has right thumb pain, depression and anxiety, and sleep disturbance. The claimant has a scar on the radial aspect of the wrist. There is tenderness over the scar area. There is a positive Finkelstein's test.

The diagnoses include (1) right de Quervain's tenosynovitis, (2) depression, (3) sleep disturbance, and (4) hypertension, nonindustrial.

It is noted that HEP is helping, she is to have a TENS trial on [REDACTED] continue PT, continue medications, depression screening on [REDACTED], sleep hygiene pending, psychologist evaluation and CBT pending, requested records from Orthopedic Surgeon, and claimant is off work.

Her work status is to remain off work for four weeks.

[REDACTED] – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report (poor copy) – Claimant presents to a TENS trial today. She has a right wrist surgical scar that is well healed on the radial aspect. Decreased ROM with flexion. Tenderness to palpation over radial styloid and over the scar.

Diagnoses include (1) right thumb pain, (2) de Quervain's tenosynovitis, (3) depression, and (4) sleep disturbance.

The treatment plan is to perform the TENS trial today, continue conservative

care, continue physical therapy, psychologist and CBT therapy sessions pending, request psychiatrist evaluation for medication management, obtain reports from orthopedics, and return in one month for follow-up.

[REDACTED], [REDACTED], Inc., Chart Note – The claimant reports right wrist/thumb levels are about the same, but feels benefit from the foam roller. Treatment included paraffin bath with MHP, STM/releases, foam roller, median nerve glides, PROM and composite thumb flexion. Claimant declined ice. She is to continue HEP. She tolerated the treatment well and is to continue stretches, strengthening, and nerve glides.

[REDACTED], [REDACTED], Inc., Chart Note – The claimant reports feeling about the same with tightness in the right forearm extending into the thumb. Treatment included ultrasound to the right forearm, STM/release to right brachioradialis, stretching, gentle wrist PROM, and joint mobility exercises.

The claimant has very tight myofascial tissue in the right forearm. She tolerated treatment well. She is to progress to the next treatment.

[REDACTED] Psy.D. – [REDACTED] Medical Clinic, Inc., Confidential Psychological Evaluation – The claimant became mildly tearful when discussing changes to her life brought on by her injury. Her affect ranged from calm to sad/tearful. The claimant currently reports pain in the right wrist that is described as burning in nature, pain/numbness in the right thumb that radiates to the forearm and is described as constant and similar to the right wrist pain, sleep disturbance, changed appetite, and notable fatigue.

The DSM diagnosis included major depressive disorder, single, severe.

Treatment recommendations are that the claimant CBT and psychotropic medications as medically necessary to address her depression and referral to psychiatrist for ongoing psychotropic medication management.

[REDACTED], [REDACTED] – Chart Note – The claimant reports that she fell while trying to protect her right wrist and her right knee is swollen and a toenail is torn. She reports continued pain/difficulty with personal care and fine manipulation. The right wrist and thumb are stiff leading to pain. At worst the pain is 7/10 after typing/writing for two minutes.

On examination, the claimant has slight edema/stiffness as noted in the dorsal right wrist near the extensor retinaculum, positive Finkelstein's, and slight pain/popping with thumb circumduction.

Her treatment included MHP to the right wrist, STM/releases to right thenar muscles, biceps stretching. She is to continue HEP, PROM of thumb, and compression sleeve at night.

[REDACTED], [REDACTED] – State of California Division of Workers' Compensation,

Primary Treating Physician's Progress Report – The claimant presents for a depression screening. On examination, the claimant has decreased ROM with flexion, tenderness to palpation near the radial styloid and over the scar of the hand and thumb.

The diagnoses include (1) right thumb pain, (2) de Quervain's tenosynovitis, (3) depression, and (4) sleep disturbance.

The treatment plan is to continue conservative care, request venlafaxine, continue physical therapy, continue CBT with Dr. Underwood, obtain records from [REDACTED] for paraffin treatment, HEP, and sleep screening.

[REDACTED], M.D. - [REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is to remain on temporary total disability from [REDACTED] to [REDACTED]

[REDACTED] Psy.D. – [REDACTED] Medical Clinic, Inc., Confidential Psychological Progress Note – The claimant reported that she had a meltdown, crying a lot when talking to a good friend about her situation. She indicates that it bothers her when emotions overwhelm her despite trying to be positive. Affect was euthymic. Psychology provided education on Gate Theory of Pain as rationale for working on emotions to assist with pain tolerance. Psychology provided education and guidance on diaphragmatic breathing to manage stress and reduce emotional reactivity.

The DSM diagnoses included major depressive disorder, single, severe. The treatment recommendation was to continue CBT as recommended.

[REDACTED] M.D. – State of California Division of Workers' Compensation – Primary Treating Physician's Progress Report – The claimant had an ergonomic evaluation on [REDACTED] including a wireless mouse, keyboard, and headset. The claimant has right thumb pain, depression and anxiety and sleep disturbance. The claimant has a scar on the radial aspect of the wrist. There is tenderness over the scar area. There is a positive Finkelstein's test.

The diagnoses include (1) right de Quervain's tenosynovitis, (2) depression, (3) sleep disturbance, and (4) hypertension, nonindustrial.

Her work status is to remain off work for four weeks.

[REDACTED] - State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – The claimant presents for sleep evaluation. Epworth score is 4. She sleeps very light and walks up 3-4 times a night due to pain. She reports right hand and wrist pain, constant at 7/10 with radiation up to the elbow. She had improvement with wrist splint and naproxen. She is currently not working with positive depressive symptoms.

The diagnoses include (1) right thumb pain, (2) de Quervain's tenosynovitis, (3) depression, and (4) sleep disturbance.

The treatment plan is to continue conservative care, appointments for paraffin

treatment, depression screening, and physical therapy. Requesting a trial of gabapentin.

[REDACTED], M.D. [REDACTED] Medical Clinic, Inc., Initial Psychiatric Evaluation – The claimant notes that she is “open for options to assist with my depression”. The claimant’s history was reviewed. The claimant notes a depressed mood, low energy, loss of motivation and anhedonia, sleep disruption, trouble concentrating, trouble making decisions, increased appetite, and significant weight gain.

On mental status examination, the claimant has a moderately restricted affect and a depressed or sad mood.

The diagnosis is major depressive disorder, single episode, moderate.

Causation is the industrial injury of [REDACTED]. Her work status is deferred to her PTP. her treatment plan is to increase venlafaxine and return in three weeks.

[REDACTED] Psy.D. – [REDACTED] Medical Clinic, Inc., Confidential Psychological Progress Note – The claimant reported mild improvement in her mood with less crying/emotional reactivity. Triggers were discussed. Affect was euthymic. We worked on reframing thoughts about her future to help her focus on activities that she can control at this time.

Her DSM diagnosis is major depressive disorder, single, moderate.

Treatment recommendations include continued work with psychiatry for medical management.

[REDACTED] M.D., [REDACTED] – [REDACTED], Hand Specialist Consultation/Request for Steroid Injection/Request for Right Wrist MRI – the claimant developed right upper extremity symptoms from repetitive keyboarding at work. She has had considerable conservative care. She had surgery and had postoperative therapy. She tried modified duties after surgery, but just could not do it anymore.

Subjectively the claimant notes a pulling sensation at and proximal to the surgery site with some numbness on the dorsoradial aspect of her right hand. She awakens three times a night because of her extremity discomfort despite the naproxen.

Examination reveals the postsurgical scar on the right radial wrist that is slightly thickened and hypertrophic. With ulnar wrist deviation, there is minimal tethering of the right thumb into extension. There is a pulling sensation with the Finkelstein’s test. Thumb discomfort with provocative testing of the extensor compartment tendons. The MP joint had the slightest ulnar sesamoid metacarpal irritation initially but on subsequent examination there was none.

There was slight tenderness on thumb with hyperextension. She did report slightly reduced sensation on the dorsal radial aspect of her right hand compared to the left. Right wrist ROM is restricted.

Assessment and diagnoses include (1) status post right de Quervain's release on [REDACTED] with residual pulling and wrist stiffness, (2) right radial neuritis post de Quervain's release without signs of nerve injury, (3) right intersection syndrome, and (4) focal right dorsal wrist tenderness, rule out ganglion cyst.

The recommendations include steroid injections after the MRI and treat her sleep disturbance.

Work status is that modified duties within limits of discomfort may continue, however, she seems fairly limited. She should be permanent and stationary within three months from now.

Apportionment is related to the [REDACTED] industrial injury.

Medical treatment includes passive wrist stretching exercises and continue medications to prevent stiffness.

[REDACTED] Medical Clinic Inc., Confidential Psychological Progress Note – The claimant describes her mood as up and down since last session. She had she recently lost her [REDACTED] and recently has not worked on her homework or practiced adequate selfcare. Affect was somewhat sad and restricted but not overly emotional. We discussed coping strategies and I helped with processing grief, focusing on aspects of her medical care that are going well, and worked on re-establishing focus on what she can control.

DSM diagnosis is major depressive disorder, single, moderate.

The treatment plan was to continue CBT sessions and contact clinic for earlier appointment to refill medications.

[REDACTED] M.D. – Primary Treating Physician's Progress Report – The claimant has depression and anxiety that causes fatigue. She also notes right thumb and right wrist pain graded at 7/10. The pain is dull and sometimes tingling at the dorsal aspect of the wrist and going up the extensor aspect of the left forearm.

Objectively the claimant has pain with range of motion of the right hand and thumb, well healed scars with tenderness over the scar area, and tenderness to the dorsal aspect of the wrist. There is a positive Finkelstein's test.

The diagnoses are (1) right wrist sprain, rule out ganglion cyst, (2) ganglion cyst of the right wrist as per Dr. [REDACTED], pending MRI to confirm, (3) right de Quervain's tenosynovitis, (4) depression, (5) sleep disturbance, and (6) hypertension, nonindustrial.

Plan is for continued HEP, TENS unit trial, continue medications, continue psychiatric care, and request MRI. The claimant is to remain off work for four weeks.

[REDACTED] M.D. – Health Diagnostics, Imaging Report – The claimant had a STAMI exam to evaluate a ganglion. The impression was (1) dorsal intercarpal synovial/ganglion cyst measuring 1.8x0.6x0.8cm, (2) negative ulnar variance with

minimal distal radial edema and minimal scattered carpal bone cystic changes, and (3) minimal extensor carpi ulnaris tendinosis is seen.

[REDACTED] M.D. – [REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is to remain on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED], M.D., [REDACTED], Treating Physician's Supplemental Report – The claimant notes ongoing worsened right dorsal wrist and forearm discomfort. Examination confirms considerable point tenderness in the midpoint of the area of intersection. The dorsum of the wrist is boggy with slight piriform fullness.

Diagnoses include (1) status post right de Quervain's release on [REDACTED] with residual pulling and wrist stiffness, (2) right radial neuritis post de Quervain's release without signs of nerve injury, (3) right intersection syndrome, and (4) focal right dorsal wrist tenderness, rule out ganglion cyst.

It is recommended that approved steroid injections be given and return in two weeks to assess injection effectiveness. Modified duties have not been available involving only brief periods of writing and typing, therefore she has been off since [REDACTED]

[REDACTED], [REDACTED] Medical Clinic, Inc., Confidential Psychological Progress Note – The claimant reported that she is feeling physically much better after needing to cancel last session due to illness. Her mood is improving but she has difficulty managing stress and frustration at times. Sleep continues to impact her pain. Affect was euthymic. Sleep hygiene was discussed.

Her DSM diagnosis is major depressive disorder, single, moderate.

The claimant is to continue CBT as planned and she is to be referred to a psychiatrist for ongoing medication management.

[REDACTED], M.D. – [REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is to remain on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED], M.D., F.A.C.S. – [REDACTED], Treating Physician's Supplemental Report/Request for Surgery – Subjectively she is sleeping better between the injections and oral medications. She is still having some tethering and extremity discomfort that prevents her from working.

Objectively the examination reveals tenderness on the dorsum of the wrist and there is a very tender cystic mass. With provocative testing she still has pulling sensation at the first extensor compartment and there is tenderness at the area of intersection in the midportion.

Assessment includes (1) status post right de Quervain's release on [REDACTED] with residual pulling and wrist stiffness, (2) right radial neuritis post de Quervain's release without signs of nerve injury, (3) right intersection syndrome

still significantly symptomatic post injection on [REDACTED], and (4) symptomatic right dorsal wrist ganglion cyst, MRI proven.

Recommendations include surgery including right dorsal wrist ganglionectomy and treatment of intersection syndrome. Return for preoperative preparations once authorization has been obtained. Postoperative therapy will most likely be needed as well.

[REDACTED] - [REDACTED] Medical Clinic, Inc., Confidential Psychological Progress Note – The claimant reports that she had a slight setback when she told she would need another surgery. She had many negative thoughts related to the surgery and long recovery as well as limits to functionality and need for help during the recovery. Affect was mildly sad. Work was done on cognitive restructuring by provision of education and the influence our thoughts have on our emotions and behavior.

DSM diagnosis is major depressive disorder, single, moderate.

Treatment is to include continued sessions of CBT as planned and continue to recommend that the claimant be referred to a psychiatrist for ongoing medication management.

[REDACTED] - [REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is to be on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED] - [REDACTED] Medical Clinic, Inc., Mental Health Progress Report – The claimant describes her mood as up and down. She worries about her upcoming surgery, which has put a mild strain on her relationships. She is taking antidepressants regularly. She feels she is managing her stress, mood symptoms, and pain better than before. On the Beck Depression Inventory the claimant scored a 35, which is suggestive of a severe level of depressive symptoms and this represents progress. On the BAI she received a score of 19, which is suggestive of low level anxiety that is similar to the level endorsed at initial evaluation.

Her DSM diagnosis is major depressive disorder, single, moderate.

The claimant's treatment plan was to continue with planned sessions and continue requesting psychiatric exam for ongoing medication management.

[REDACTED] - [REDACTED] Medical Clinic Inc., Confidential Psychological Progress Note – The claimant described her mood as anxious. Affect was euthymic. We worked on challenging negative thoughts related to the surgery and explored other techniques such as positive self-talk and reframing in preparation for surgery.

The diagnosis is major depressive disorder, single, moderate.

The treatment recommendations include continue sessions and refer to psychiatrist for ongoing medication management.

[REDACTED] [REDACTED] Medical Clinic Inc., Work Status Form – The claimant is on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED] [REDACTED] M.D., F.A.C.S. – [REDACTED], Treating Physician's Supplemental Report – Subjectively the claimant notes ongoing tenderness in the dorsum of the wrist and distal forearm. She notes tightness and tenderness along the back of her thumb.

Objectively the examination reveals a hypertrophic longitudinal scar on the right radial wrist about a 1cm area just distal to this part of the same scar is barely discernable. She has a small but very tender cyst mass on the dorsum of the right wrist just ulnar to the midline. Swelling and considerable tenderness in the area of intersection less in the 2nd extensor compartment. There is minimal tethering of the right thumb into extension.

The diagnoses include (1) status post right de Quervain's release on [REDACTED] with residual pulling, wrist stiffness, and a hypertrophic scar with minimal tethering, (2) right radial neuritis post de Quervain's release without signs of reparable nerve injury, (3) right intersection syndrome persisting post injection on [REDACTED], and (4) symptomatic right dorsal wrist cyst, MRI proven.

The recommendations are that she knows pre-surgical instructions. The claimant will begin complete temporary disability on [REDACTED] before some modified duties are made possible.

[REDACTED] [REDACTED] – [REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is to remain on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED] [REDACTED] – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – The claimant continues to report right wrist pain, 40% improvement with splint and meds, and positive depressive symptoms.

The diagnoses include (1) right thumb pain, (2) de Quervain's tenosynovitis, and (3) depression.

The plan was to refill medications, continue conservative care, return to clinic for paraffin treatment, continue HEP, and continue to see psychologist [REDACTED]

[REDACTED] [REDACTED] – [REDACTED] Medical Clinic, Inc., Confidential Psychological Progress Note – The claimant reported that she did not have wrist surgery as planned secondary to being ill. she described her mood as anxious about the surgery. She is sleeping poorly.

DSM diagnosis was major depressive disorder, single, moderate.

Treatment recommendations include continue sessions as planned and continue to authorized CBT sessions. Continue requesting the claimant be referred to a psychiatrist for ongoing medication management after the departure from the

clinic of Dr. [REDACTED]. The expected outcomes is that the claimant will improve her functioning, prevent further decline, and relieve/improve distressing symptoms.

[REDACTED] M.D., [REDACTED] - [REDACTED] Treating Physician's Supplemental Report - The claimant's surgery was delayed because of flu, but now she has recovered.

Objectively the claimant has a minimally thickened scar longitudinally over the first extensor compartment. There is minimal tethering of the right thumb into extension with ulnar wrist deviation. There is tenderness at the second extensor compartment and especially in the area of intersection at distal forearm.

The diagnoses include (1) status post right de Quervain's release on [REDACTED] with residual pulling, wrist stiffness, and hypertrophic scar with minimal tethering, (2) right radial neuritis post de Quervain's release without signs of repairable nerve injury, (3) right intersection syndrome persisting post injection on [REDACTED], and (4) symptomatic right dorsal wrist cyst, MRI proven.

The recommendations include continuing with surgery. She will remain off work.

[REDACTED] - State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report - The claimant presents for follow up with continued reports of right upper extremity pain. She reports a good mood on exam and is eager to proceed with surgery.

The diagnoses included (1) de Quervain's tenosynovitis and (2) depression, major, not specified.

The treatment plan was to proceed with surgery, refilled medications, postop PT pending, continue with [REDACTED], continue HEP, and continue TENS unit. Return to clinic in four weeks.

[REDACTED] -C - State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report - The claimant presented for follow-up and reports continued right upper extremity pain. She reports a good mood today and is eager to proceed with surgery.

The diagnoses include (1) de Quervain's tenosynovitis and (2) depression, major, not specified.

The plan is to refill medications, postop physical therapy is pending, continue follow-up with [REDACTED], continue HEP, and continue TENS unit. Remain off work for four weeks and return in four weeks.

[REDACTED] - [REDACTED] Medical Clinic, Inc., Work Status Form - The claimant is to remain on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED] M.D. - [REDACTED] Surgery Center, Inc., Surgical Note - Preop and postop diagnoses included (1) right dorsal wrist ganglion, (2) right wrist mid-

carpal synovitis, (3) right second extensor tendonitis, and (4) right forearm intersection syndrome.

Procedure performed is listed as (1) excision of right dorsal wrist radiocarpal ganglion, (2) arthrotomy for synovectomy of mid-carpal joint, (3) release of right second extensor compartment, and (4) tenolysis of distal forearm for intersection syndrome, separate incision.

[REDACTED], M.D., F.A.C.S. – [REDACTED] Treating Physician's Supplemental Report – Subjectively the claimant had pretty intense discomfort for the first day and a half but she has been starting to do exercises since.

Objectively the examination reveals that the sutures have just been removed and she has considerable swelling about the fingers, hand, and wrist. She has 25 degrees of right wrist volar flexion and 35 degrees of dorsiflexion and the finger slowly touches the proximal palm and misses the distal palmar crease by about half a centimeter.

The diagnoses include (1) status post right de Quervain's release on [REDACTED] with some residual pulling, stiffness, hypertrophic scar, and minimal first extensor tethering, (2) right radial neuritis post de Quervain's release surgery, (3) right forearm intersection syndrome status post-surgery tenolysis on October 6, 2015, (4) status post release right second extensor tendinitis, and (5) status post excision of right dorsal wrist ganglion on [REDACTED]

It is recommended that she continue therapy and return in three weeks for re-evaluation of work status.

[REDACTED] – Intake Form – The claimant's job title is listed as [REDACTED] for the [REDACTED]. She lists her date of injury as [REDACTED] with the body parts affected as right fingers and right wrist.

[REDACTED], [REDACTED] – [REDACTED] Medical Clinic, Inc., Confidential Psychological Progress Note – The claimant reported that she has had emotional ups and downs since surgery. She is trying to use therapeutic techniques to manage pain. Discomfort is also impacting her sleep. Affect was primarily euthymic. DSM diagnosis is listed as major depressive disorder, single, moderate. The treatment recommendations are to continue her course of planned therapy and attend CBT with the hopes of improving her functioning, preventing further decline, and relieving/improving distressing symptoms.

[REDACTED], M.D. - [REDACTED] Treating Physician's Supplemental Report/Work Change – Subjectively she has been having some radiating pains along the extensor forearm and she notes the adherent scab on the dorsum of the right hand.

Objectively the examination reveals a 1.5mm x 3mm adhered exudate on the

dorsum of the right wrist ganglion incision. There is a firm, woody induration about the surgical sites. She demonstrates 20 degrees of passive right wrist volar flexion and 35 degrees of passive dorsiflexion. There is also pulling in the forearm of the Finkelstein's test, but not the radial wrist.

Diagnoses included (1) status post right de Quervain's release on [REDACTED] with some residual pulling, stiffness, hypertrophic scar, and minimal first extensor tethering, (2) right radial neuritis post de Quervain's release surgery, (3) right forearm intersection syndrome status post-surgery tenolysis on [REDACTED], (4) status post release right second extensor tendinitis status post release right second extensor compartment on [REDACTED] and (5) status post excision of the right dorsal wrist ganglion on [REDACTED]

The claimant is encouraged to advance beyond her restrictions as discomfort may allow. Medications were refilled. Modified duties at work are to be resumed [REDACTED] with a maximum of minutes per hour of writing, keying, or typing and one pound of lifting.

[REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is to be on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED] provider – [REDACTED], Response Letter – Subjectively the claimant has functional limitations such as opening a jar, turning the door knob, putting a key in to drive, driving, personal hygiene, folding clothes, and writing.

Objectively the claimant has restricted right wrist ROM, decreased wrist strength, and edema. Sensation reveals numbness in the thenar region and back of the hand. The wound is healing with a dry scab on the proximal scar of the forearm.

The assessment and plan are that the claimant is recommended to have skilled OT twice a week for right upper extremity function. This is to include gradual progressive stretching and manual therapy techniques.

[REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is to remain on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED] Physician – Internal Medicine and Pain Management – (page 158) Handwritten and very difficult to discern.

[REDACTED] Medical Clinic, Inc., Confidential Psychological Progress Note – The claimant describes her mood as up and down, but she feels it is generally improving and that she is managing the ups and downs. Affect was euthymic.

Her DSM diagnosis was major depressive disorder, single, mild.

Treatment recommendations include finish this course and continue to CBT

therapy course.

[REDACTED], [REDACTED] – [REDACTED] Note –

Subjectively the claimant states that she is getting more range of motion now, however, still has burning pain in the wrist.

Objectively the claimant received treatment to improve right upper extremity ROM, massage of the scar tissue, and reviewed HEP.

Assessment includes that the claimant is improving in therapy with increased wrist movement.

The plan is to continue POC for 45 minutes.

[REDACTED], [REDACTED] – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – Subjectively the claimant has a pain level of 6-7/10, she reports increase in sharp shooting pain in the right wrist to the fingertips. She states that she cannot hold on to the steering wheel or type for more than a minute. She has positive weakness, numbness, and tingling.

Objectively she has tenderness to palpation near the radial styloid and thumb, decreased flexion, and positive Phalen's test.

The diagnoses include (1) de Quervain's tenosynovitis and (2) depression, major, not specified.

The treatment plan is to refill medications, start gabapentin, request surgery report from Dr. [REDACTED] continue physical therapy, continue psychology visits with Dr. [REDACTED] continue HEP, and continue TENS unit. The claimant is to remain off work for four weeks and return for evaluation at that time.

[REDACTED], [REDACTED] – [REDACTED] Independent Medical Review Final Determination Letter – Final determination is to uphold, which means that none of the disputed items/services are medically necessary and appropriate.

[REDACTED], [REDACTED] – [REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is to remain off work from [REDACTED] to [REDACTED] on total temporary disability.

[REDACTED], [REDACTED] – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – Subjectively the claimant continues to have right wrist pain while objectively she has a well healed surgical incision on the dorsal right wrist.

The diagnoses included (1) de Quervain's tenosynovitis and (2) depression, major, not specified.

The treatment plan is to decrease venlafaxine, refill medications, follow up with Dr. [REDACTED], and encouraged to begin HEP. She is to remain off work until [REDACTED]

[REDACTED] D.O. – [REDACTED] Medical Clinic, Inc., Work Status Form – The claimant is on total temporary disability from [REDACTED] to [REDACTED]

[REDACTED], OTR, LCHT – [REDACTED] Inc., [REDACTED] Note – Subjectively the claimant's pain is slightly better but still really hurts when she tries to push up from a chair.

Objectively paraffin and MHP to the wrist and hand, massage and desensitization, and STM/MFR forearm.

Assessment includes forearm extensor tightness and tenderness with limited wrist flexion contributing to functional limitations like performing backside hygiene.

The plan is to continue as planned.

[REDACTED], [REDACTED] – [REDACTED] Medical Clinic, Inc., Confidential Psychological Progress Note – The claimant reports that her mood is improving. She continues to have ups and downs related to work and her limitations due to her injury. Affect was euthymic.

Her DSM diagnosis was major depressive disorder, single, partial remission.

The treatment recommendations included that she continue therapy and progress to CBT. She is to learn to assess symptoms and stability in the final session after her return to work in February.

[REDACTED] – [REDACTED] Secondary Treating Physician's Supplemental Report – Subjectively the claimant has two therapies left. the claimant was placed on a nerve medicine, but there is more burning sensation over the dorsal radial wrist.

Objectively the claimant has right wrist dorsiflexion of 42 degrees and volar flexion of 24 degrees. There is a minimally thickened but wide scar on the dorsum of her left wrist post ganglionectomy. She also mentions that the right thumb seems to start getting caught for the past two weeks and she notes the abnormal motion at the IP joint.

Diagnoses include (1) status post right de Quervain's release on [REDACTED] with some residual pulling, stiffness, hypertrophic scarring, and minimal first extensor tethering, (2) right radial neuritis post de Quervain's release surgery, (3) right forearm intersection syndrome status post-surgery tenolysis on [REDACTED], (4) status post release right second extensor tendinitis status post release right second extensor compartment [REDACTED], (5) status post excision of right dorsal wrist ganglion on [REDACTED], and (6) possible right trigger thumb versus early right thump IP arthritis.

Dr. [REDACTED] recommends that the claimant continue passive wrist stretches and finish therapy appointments. Return in three weeks for follow-up. The claimant is to continue off work.

[REDACTED], M.D. – [REDACTED] M.D., Inc., Panel Qualified Medical Evaluation – Medical records and medical history were reviewed. Her current complaints included pain in the right hand that hurts most over the extensor compartment of the right wrist in a partial wrist C-like distribution. She complains of deep, aching, throbbing, tingling, burning, radiating, and numb pain to the right thumb on the right side only. The left hand does not bother her. The pain makes it hard for her to write and type as well as sleep.

Her job description was reviewed.

On physical examination, her right wrist range of motion was limited and her right grip strength was decreased when compared to the left. She had changes of the upper extremities that looked like either stretch marks and on her right antecubital fossa it looked like she had had a lot of IVs started in the past with some scarring. She also said they were stretch marks on her right elbow. On the extensor component there were port stab versus an incision site which was hypertrophic measuring 2x0.5cm with hardness, induration, and palpable scar tissue. There were some superficial abrasions from sutures on the extensor compartment of the wrist with a lot of swelling over that area. The extensor compartment of the thumb area revealed hypertrophy and another scar measuring 1.5x0.5cm with palpable scar tissue. It was indurated and hard. The left elbow had an incision with mild hypertrophy at the ends of it measuring 5cm in its length and almost 1cm at its greatest width. There was diffuse swelling about the right extensor compartment of the wrist and of both hands. There was mild subluxation of the CMC joints. Finkelstein's test was positive on the right.

Diagnoses for the claimant included (1) [REDACTED], Dr. [REDACTED] release first dorsal compartment, multiple compartments, right wrist for right wrist de Quervain's, (2) [REDACTED], excision of right dorsal wrist radiocarpal ganglion with arthropathy for synovectomy, mid-carpal joint release of right second extensor compartment with tenolysis of the distal forearm, for intersection syndrome, separate incision, (3) right wrist arthritis, (4) excessive scar tissue from surgeries with hypertrophy from 1-2, (5) diminished right grip strength, (6) depression and anxiety, (7) insomnia, and (8) chronic pain.

The claimant is noted to be permanent and stationary as of evaluation date.

Causation is noted to be from the injury of [REDACTED] while working in her usual and customary position. 100% of assigned impairment is industrial and related to her work for the [REDACTED]. No outside nonindustrial apportionment is indicated. The impairment rating is complicated. [REDACTED]% right upper extremity impairment, [REDACTED]% related to right upper extremity scar tissue and lack of resolution of symptoms from two surgeries, [REDACTED]% add on for pain is indicated. Dr. [REDACTED] notes that in his expert medical analysis to obtain an accurate rating, the impairments in this case do not overlap and should be added rather than combined.

Future medical care is noted to be continued treatment with her PTP for visits, medication and injections. She has revision of her scar by plastic surgeon

included as future medical care. Further testing could also be performed.

[REDACTED], M.D. – [REDACTED] M.D., Inc., Nerve Conduction Study Report – History of right upper extremity/hand pain with numbness. The summary is that all nerve conduction studies are normal. The needle EMG examination of all tested muscles is normal.

[REDACTED], D.O. – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – Subjectively the claimant had an AME with Dr. [REDACTED] on [REDACTED]. She has continued right hand pain and difficulty sleeping.

Objectively the claimant has well healed surgical incisions.

Her diagnoses included (1) de Quervain's tenosynovitis and (2) depression, minor, not specified.

The treatment plan including awaiting the QME report. continue medications, trial of Lunesta, encourage HEP, manage pain, and she is to remain off work until [REDACTED]

[REDACTED] – [REDACTED] Medical Clinic, Inc., Work Status Report – The claimant is totally temporarily disabled from [REDACTED] to [REDACTED]

[REDACTED] M.D., [REDACTED], Secondary Treating Physician's Supplemental Report/Request for Additional Postoperative Therapy – Subjectively the claimant had a QME with Dr. [REDACTED] on [REDACTED] who indicated to her that she would be returning to her preinjury work. She still has two original therapy sessions left. She tried using a computer for about an hour on Wednesday and that caused great increased discomfort and she has not gone back to it.

Objectively the examination reveals right wrist volar flexion of 30 degrees and 40 degrees of dorsiflexion. She initially grasped her fingers to do the stretches. Grip strength is 22/34 R/L.

Diagnoses include (1) status post right de Quervain's release on [REDACTED] with some residual pulling, stiffness, hypertrophic scar and minimal first extensor tethering, (2) right radial neuritis post de Quervain's release surgery, (3) right forearm intersection syndrome, status post-surgery tenolysis on [REDACTED] (4) status post release right second extensor tendinitis, status post release of right second extensor compartment on [REDACTED] (5) status post excision of right dorsal wrist ganglion on [REDACTED] and (6) possible right thumb versus early right thumb IP arthritis.

Recommendations include completing her current therapy. Requesting eight additional postoperative therapy visits. Work status includes modified duties, which cannot be accommodated, therefore she is to remain off.

RE: XXXXX, XXXX
CalPERS No. 0000000000

Page 29 of 37
DOE: [REDACTED]

[REDACTED] - [REDACTED] Medical Clinic Inc., Work Status Form - Total temporary disability from [REDACTED] to [REDACTED]

[REDACTED] - [REDACTED] Medical Clinic, Inc., State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report - The claimant complains of constant right wrist pain that is described as aching pain with level of 4/10. Paraffin bath of the right wrist decreased pain less than 50%.

The diagnoses include (1) right thumb pain, (2) de Quervain's tenosynovitis, (3) depression, (4) hypertension, (5) hypothyroidism, and (6) sleep disturbance.

The treatment plan includes refilling medications, continue conservative care, return to clinic for paraffin treatment, completed PT with minimal benefit, continue HEP, and continue psychology treatment with Dr. [REDACTED]. The claimant is to remain off work until TTD.

[REDACTED] - [REDACTED] Medical Clinic, Inc., Mental Health Progress Report - The claimant has attended 12-sessions of psychotherapy incorporating cognitive behavioral mood and pain management techniques including cognitive restructuring, positive self-talk, guided imagery, mindfulness, pacing, activity scheduling, communication skill building, and diaphragmatic breathing. The claimant reported that psychology has helped a great deal. Currently, because she is trying to reassess what she will do in her life, she is feeling more helpless but she reports that she is generally coping better. Over the course of treatment, the claimant demonstrated congruency and consistency in the report of symptoms. She never appeared to be exaggerating her pain level or emotional ailments for secondary gain or empty to gain sympathy.

Testing revealed an initial BDI score of 51, suggestive of extreme level depressive symptoms, and most recently a BDI score of 33, suggestive of slightly lower but still severe level depressive symptoms. On the BAI she endorsed low level anxiety symptoms at initial evaluation and mild symptoms with situational stressors at midpoint of therapy and a slightly lower, but still mild level of anxiety symptoms as of her final session with a score of 17. The claimant remained stable with similar levels of clinically significant pain catastrophizing.

Helplessness has increased to a 98th percentile, which is consistent with her report in session that she feels helpless and congruent with someone who has recently learned that their plans for return to work cannot be realized.

Rumination is slightly lower at 91st percentile, but still clinically relevant.

Her DSM diagnosis is major depressive disorder single, mild to moderate.

Estimated GAF score of 61 with a WPI of 14.

Causation, disability and apportionment include injuries to the psyche including the events of employment as the predominant cause (51% or more). The issue of causation seems relatively straightforward and unambiguous. The industrial psyche injury is a compensable consequence of this admitted physical injury. The

psychiatric disorders listed on Axis I appear to be virtually entirely industrial in nature. I found the claimant to be a credible historian and did not find any evidence of symptoms exaggeration of pain amplification. Causation appears to easily exceed the 51% threshold.

The claimant is stable at this time; however, she is experiencing increased symptoms at this time as noted. Given her injury, ongoing stressors exacerbate her condition. She may require up to 15 psychotherapy sessions per year to be used at her discretion when her mood symptoms exceed her ability to cope.

[REDACTED] Brian Thomas [REDACTED] - State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report - The claimant denies new symptoms. She continues to report wrist pain described as aching pain with level of 4/10.

The diagnoses include (1) right thumb pain, (2) de Quervain's tenosynovitis, (3) depression, and (4) sleep disturbances.

Her treatment plan includes refilling venlafaxine, continue conservative care, return for paraffin treatments as needed, completed PT, continue HEP and to see Dr. [REDACTED] and request authorization for psychiatrist evaluation for medication input. She is to remain on modified work from [REDACTED] to [REDACTED] as per QME dated [REDACTED]

[REDACTED] [REDACTED] - [REDACTED] Medical Clinic Inc., Work Status Form - Modified duties from [REDACTED] to [REDACTED] of climbing up to two hours only, reaching with the right hand for up to two hours only, bilateral hand grasping, pulling and pushing of no more than 15-pounds for up to two hours only. Claimant would benefit from dragon software.

[REDACTED] [REDACTED] M.D. - [REDACTED] Supplemental Secondary Treating Physician's Report - Subjectively she was found permanent and stationary with disability and permanent restrictions in January 2016 in an AME with Dr. [REDACTED]. The assessment and diagnoses included (1) status post right de Quervain's release on [REDACTED] with some residual pulling, stiffness, hypertrophic scar, and minimal first extensor tethering, (2) right radial neuritis post de Quervain's release surgery, (3) right forearm intersection syndrome, status post-surgery and tenolysis on [REDACTED], (4) status post release right second extensor tendinitis status post release right second extensor compartment on [REDACTED] (5) status post excision of right dorsal wrist ganglion on [REDACTED], and (6) possible right trigger thumb versus early right thumb IP arthritis.

Recommendations are to practice passive stretching exercises, continue eight additional therapy sessions, and return for MMI/P&S evaluation. Her work status is with modified duties, however, these have not been accommodated.

[REDACTED] Dr. [REDACTED] - State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report - The claimant denies new symptoms. She completed her CBT with Dr. [REDACTED], however, she feels stress and anxiety about going back to work and would like to see Dr. [REDACTED] a few more times. She still reports wrist pain that is described as aching at a level of 4/10.

The diagnoses included (1) right thumb pain, (2) de Quervain's tenosynovitis, (3) depression, and (4) sleep disturbance.

The treatment plan included venlafaxine, request CBT x3, request paraffin home unit, continue conservative care, complete PT, continue HEP, request for authorization for psychiatrist evaluation for medication management. The claimant is to remain off work until [REDACTED] and then return to modified work as per QME dated [REDACTED].

[REDACTED] - [REDACTED] Medical Clinic Inc., Work Status Form - Modified duties from [REDACTED] to [REDACTED] of climbing up to two hours only, reaching with the right hand for up to two hours only, bilateral hand grasping, pulling and pushing of no more than 15-pounds for up to two hours only. Claimant would benefit from new software.

(note the copy is cut off at this point)

[REDACTED] Nancy [REDACTED], [REDACTED] - [REDACTED] Medical Clinic, Inc., Mental Health Progress Report - Subjectively the claimant describes her mood as overwhelmed and depressed. She is doubting her ability to return to work after approximately two years absent.

Objectively, Mr. [REDACTED] has previously benefitted from physical therapy, regularly using therapeutic techniques. She presents today as overwhelmed and sad. Self-doubt is likely related to depression. Affect appears similar but slightly worse than when I saw her last February, however, she reached out at that time to seek help, which is a good sign. On the Beck Depression Inventory, she received a score of 39, which is suggestive of severe level depressive symptoms. On the BAI, she reviewed a score of 5, which is not suggestive of clinically significant levels of anxiety. This represents improvement as compared to mild anxiety at termination in February.

Medical records were reviewed.

The DSM diagnosis is major depressive disorder, single, moderate.

Impression is that the claimant presents with increased symptoms of depression as compared to when she completed a course of psychotherapy in [REDACTED].

[REDACTED] Today we discussed coping strategies for managing her stress related to issues, I provided educational materials on depression for her partner, and in my professional opinion the claimant is in need of continued psychotherapy to help manage her depressive symptoms as she transitions back to work with restrictions.

The claimant's treatment plan is to request an additional 10-12 psychotherapy sessions to help in her recovery from clinical depression.

[REDACTED], Notice of Utilization Review Determination to the Non-Physician Provider – A request for venlafaxine 75mg for "other chronic pain" is certified to start [REDACTED] and end [REDACTED]

[REDACTED] M.D. – [REDACTED] Notice of Utilization Review Decision – Items requested and approved include psychology visits for CBT x4, consultation with a psychiatrist for evaluation for medication input, venlafaxine 75mg, DME purchase-Paraffin home unit.

[REDACTED] M.D. – [REDACTED] Secondary Treating Physician's Supplemental Report – Subjectively the claimant has two therapies left, which have been helping a lot; especially the paraffin baths. She is still having some difficulty sleeping, especially when her wrist is in the dorsiflexed position. She would like to try regular work, but does not know her functional capacity.

Objectively the examination reveals right wrist volar flexion at 37 degrees and dorsiflexion to 40 degrees. She still notes some numbness in the radial nerve distribution. Grip strength is 40 pounds on the right compared to 34 pounds on the left.

Assessment includes (1) status post de Quervain's release on [REDACTED] with some radial pulling, stiffness, hypertrophic scar, and minimal first extensor tethering, (2) right radial neuritis post de Quervain's release surgery, (3) right forearm intersection syndrome, status post-surgery, tenolysis on [REDACTED] (4) status post release of right second extensor tendinitis status post release of right second extensor compartment on [REDACTED] (5) status post excision of right dorsal wrist ganglion on [REDACTED] and (6) probable early right thumb IP arthrosis, trigger thumb seems unlikely.

Recommendations are that she continue her passive stretches. I believe her motion and strength have stabilized, but her ability to work remains unknown.

MMI and P&S is off until it is clear whether she can return to work or not full unrestricted.

The claimant is able to return to work and attempt to sustain her regular duties, but this is up to her PCP, [REDACTED] direction. I am also requesting that the claimant get an at home paraffin bath unit so she can do it every morning and as needed.

[REDACTED] D.O. – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – Diagnoses include (1) de Quervain's tenosynovitis and (2) depression, major, not specified.

This reports notes that it was "dictated" and therefore all that was included was

RE: XXXXX, XXXX
CalPERS No. 0000000000

Page 33 of 37

DOE: [REDACTED]

the diagnoses.

[REDACTED] - [REDACTED] Medical Clinic, Inc., Work Status Form – Modified duties [REDACTED] to [REDACTED] No lifting greater than 15-pounds and limited to 2 hours on keyboard.

[REDACTED] - [REDACTED] Medical Clinic, Inc., Primary Physician's Progress Report – In response to a request made for clarification of work restrictions assigned [REDACTED] My physician's assistant made a request for accommodations with touch screen computer and Dragon software, however, the claimant's employer is unable to accommodate these requests.

The claimant's medical history was reviewed.

Subjectively the claimant notes right upper extremity pain and complains of residual right wrist stiffness. Her pain level is 2/10 in intensity at the time of the examination today. Pain is described as dull and localized to the dorsal aspect of the wrist. The pain is aggravated with extended repetitive use of the right upper extremity, lifting heavy objects and forceful gripping. Pain is relieved by rest.

Objectively the claimant has visual swelling relative to the contralateral side. There are three well-healed surgical incisions about the dorsal aspect of the wrist. On palpation, the claimant is mildly tender to palpation about the dorsal aspect of the wrist. Active range of motion is limited in the right wrist. Finkelstein's is weakly positive.

Medical records were reviewed.

After reviewing records from Dr. [REDACTED] and Dr. [REDACTED] in my opinion, the following formal work restrictions are appropriate for this claimant at this time. the claimant is not to lift, pull or push greater than 15-pounds with the right upper extremity. The claimant is to limit keyboarding to no more than two hours per work shift. The claimant is to self-modify her duties as deemed appropriate. I have a low threshold for adding further duty modifications or, if appropriate, removing duty preclusions going forward.

Assessment includes (1) status post multiple surgical procedures of the right wrist and (2) major depressive disorder.

The claimant's treatment plan includes getting the claimant back to work. Wean off cyclobenzaprine, continue venlafaxine, and continue NSAID medication as prescribed. Continue psychotherapy with Dr. [REDACTED] Continue current prescribed course of physical therapy. Return in six weeks for repeat evaluation.

Request for authorization for continuous medical necessity treatment/medications to cure or relieve the effect of the industrial injury.

[REDACTED] M.D. - [REDACTED] MD, Inc, QME Electrodiagnostic Medicine – In reply to the request for a supplemental report regarding the claimant's limitations of ADLs due to her scar, when I saw the claimant she had

pain in the right hand that hurt most over the extensor compartment of the right wrist in a partial wrist C-like distribution. She complained of a deep aching, throbbing, tingling, burning, radiating, and numb pain to the right thumb on the right side only. The pain makes it hard for her to write and type. There is numbness and burning inside her wrist. She cannot sleep at night because of this. The pain is there all of the time and is worse with use of over a minute. The pain is better with rest.

The claimant has a hard time driving with the right hand and holding onto the steering wheel with both hands. Using a computer, mousing, typing, showering, bathing, doing ADLs, wiping after a bowel movement, and holding a book are difficult as any use of the right hand causes pain. She also has numbness and tingling.

On the extension component of the examination there were symptoms at the incision site which was also hypertrophic measuring 2x0.5cm with a hardness induration and palpable scar tissue. There were some superficial abrasions from sutures on the extensor compartment of the wrist with a lot of swelling over that area measuring 3x1cm and they looked like three separate parallel scratches. On the extensor compartment of the thumb area, there was hypertrophy and another scar measuring 1.5x0.5cm with palpable scar tissue that was indurated and hard.

The left elbow had an incision with mild hypertrophy at the ends of it measuring 5cm in its length and almost 1cm at its greatest width. There was diffuse swelling about the right extensor component of the wrist of both hands.

[REDACTED] Medical Clinic, Inc., Mental Health Progress Report – Subjectively the claimant reported that she returned to work in her prior position in May, after accommodations were worked out, and that lifted a large amount of her stress. However, over time the stresses associated with her injury have taken a toll on her relationship with her partner. The claimant notes that she is now working on this and that it has been helpful to work with psychology to assist in emotional readiness for return to work. The claimant's affect was euthymic, mildly stressed because she was working on her day off and covering for someone caused her to be late to the appointment. Setting boundaries and goals for committing herself to adequate self-care was discussed. An app was discussed to help manage stress.

Objectively the claimant appears to be benefitting from therapy and is beginning to show resilience as she starts back to work, but will benefit from ongoing work with stress management.

Her Beck Depression Inventory was 17, suggesting a borderline level of depressive symptoms.

On the BAI she received a score of 5, which was equal to her score in [REDACTED] and does not suggest a clinical significant level of anxiety.

She also completed the Pain Catastrophizing Scale and received a score of 12,

which does not suggest a clinical significant pain catastrophizing level.
Medical records were reviewed.
DSM Diagnosis was major depressive disorder, single, mild.
Treatment plan was to continue additional sessions.

[REDACTED] claims representative – Letter to Dr. [REDACTED] – The claimant was provided an ergonomic evaluation and recommended equipment was purchased and provided for her use during her working hours. After one month, it is noted that there was a small issue with the system compatibility with the claimant's new ergonomic equipment and the issue was resolved.

Ms. [REDACTED] is requesting an assessment of the claimant's work status, now that she has been using the ergonomic equipment, in relation to her essential functions list.

[REDACTED] [REDACTED] [REDACTED] – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – Claimant reports for follow-up and notes that she has been increasing her work load due to lack of staff at work. She feels her right upper extremity pain is worse. Paraffin home instruction has been authorized. Additional CBT with Dr. [REDACTED] has also been authorized.

Subjectively the claimant continues to report wrist pain, described as aching pain with level at 4/10. Decreased range of motion with tenderness to palpation near the radial styloid over the scar.

The claimant is status post right DeQuervain's release on [REDACTED] and status post excision of right dorsal wrist ganglion on [REDACTED] with Dr. [REDACTED]

Objectively the claimant has right thumb pain, sleep disturbance, DeQuervain's tenosynovitis, and depression.

Dr. [REDACTED] recommended stretching, HEP, and trying to do computer work under restrictions. Continue CBT, continue conservative care, complete PT, and take off work for 1 week until follow-up with PTP for work status change.

[REDACTED] [REDACTED] [REDACTED] – State of California Division of Workers' Compensation, Primary Treating Physician's Progress Report – Subjectively the claimant reports worsening of right wrist pain.

Objectively the claimant has tenderness to palpation, but well healed surgical incisions.

Diagnoses included (1) DeQuervain's tenosynovitis and (2) depression, major, not specified.

Treatment plan is to continue current restrictions and medications. The claimant is to remain off work until [REDACTED]

[REDACTED] [REDACTED] [REDACTED] – [REDACTED] Medical Inc., Work Status Form – Total temporary disability from [REDACTED] to [REDACTED].

[REDACTED] - [REDACTED], Inc., Confidential Psychological Progress Note – The claimant describes her mood as up and down. Changes at work due to workload and staffing have made it difficult for her to perform her job duties. She is currently off work until [REDACTED] per Dr. [REDACTED] order. The claimant is frustrated and sad about not being able to return like she thought. Affect was somewhat stressed and mildly sad. Supportive therapy was provided to help her recognize that stress was coming in the form of uncertainty about her future as well as potential loss of her career. Her feelings were normalized with cognitive restructuring and setting expectations. DSM Diagnosis was major depressive disorder, single, mild. Her expected outcome was stabilization and improvement of her functioning, preventing further decline, and relieving/improving distressing symptoms. Treatment plan included continued sessions.

[REDACTED], M.D. – [REDACTED] MD, Inc. – QME, Electrodiagnostic Medicine – In reply to the supplemental request, I reviewed the [REDACTED] work site evaluation, Dr. [REDACTED] and [REDACTED] reports and [REDACTED] job description, Ms. [REDACTED] needs the recommendations of [REDACTED] to continue working. otherwise, I agree with her physicians, who agree with my restrictions.

[REDACTED] - [REDACTED] Medical Clinic, Inc., Physician's Progress Report – Chief complaint of right hand pain with injury date of [REDACTED] Subjectively the claimant complains of right hand and wrist pain, graded at 7/10, for the last three years. Physical examination reveals crepitus noted over the right wrist joint with tenderness to palpation. Diagnosis was tendonitis of the right wrist. Treatment plan was to continue over-the-counter NSAIDs and paraffin baths. The claimant has been instructed to remain off-work until [REDACTED]

[REDACTED] - [REDACTED] Medical Clinic Inc., Confidential Psychological Progress Note – The claimant reported her mood as nervous and has been up and down with pending retirement dates scheduled for [REDACTED] Affect was appropriate to conversation and ranged from mildly sad to reflective. DSM diagnosis was major depressive disorder, single episode, mild. Expected outcome was noted as stabilize and improve functioning, prevent further decline in functioning, and relive or improve distressing symptoms. Treatment recommendations include evaluating to determine level of symptoms and appropriate treatment moving forward at the next session.

[REDACTED] XXXXXX XXXXX, claimant- XXXXXX Authorization to Disclose Protected Health Information. Signed by the claimant.

RE: XXXXX, XXXX
CalPERS No. 0000000000

Page 37 of 37
DOE: [REDACTED]

[REDACTED] XXXXXX XXXXX, claimant – XXXXXX Disability Retirement Election Application – The claimant was injured on the job by repetitive use of the computer and keyboarding. She is currently limited in use of her right wrist. The claimant can only be on the computer for less than 15-minutes at a time. she cannot perform her regular duties due to the swelling or burning sensation aggravating her wrist and also cannot write for more than two minutes without pain and discomfort. the claimant is works full-time, however, is not currently working in any capacity. The claimant's current job duties are 90% computer based. The claimant lists her treating physician as occupational medicine doctor, [REDACTED]

[REDACTED] [REDACTED] – [REDACTED] Medical Clinic, Inc. – XXXXXX Physician's Report on Disability – The claimant worked as a XXXX [REDACTED] and is claiming injury on [REDACTED] with last date of work being [REDACTED]. The claimant was first seen by the examiner on [REDACTED]. The injury is claimed to be work related from repetitive trauma.

Examination findings include pain of the right upper extremity with limited range of motion, pain, and weakness of the right hand.

Diagnosis made is status post multiple right hand surgeries with well healed surgical incisions. MRI of the right hand on [REDACTED] revealed a ganglion cyst.

The claimant is limited to no repetitive use of the right hand.

The claimant's incapacity is permanent. She is unable to use a keyboard or mouse.

The job duty statement/job description as well as physical requirements of position/occupation were reviewed.

[REDACTED] [REDACTED] – [REDACTED] Medical Clinic Inc., Physician's Progress Report – Chief complaint is right hand pain. Date of injury is [REDACTED]

Subjectively the claimant has been experiencing this pain for three years. Her pain is 5/10. The right hand pain is unchanged.

Physical examination reveals crepitus over the right wrist joint with tenderness to palpation. The range of motion is also decreased.

Diagnoses are (1) tendonitis of the right wrist and (2) history of hand surgery.

The treatment plan was to continue her current medications. She is permanent and stationary per AME. Follow-up as needed.

End of Report.



November 28, 2017

To: Each Member
Board of Retirement

From: Disability Procedures & Services Committee
Vivian H. Gray, Chair
Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

For: December 14, 2017 Board of Retirement Meeting

Subject: **RELEASE OF PSYCHIATRIC/PSYCHOLOGICAL MEDICAL RECORDS
TO UNREPRESENTED APPLICANTS**

RECOMMENDATION

That the Board of Retirement adopt the recommended policy statement contained in this memorandum regarding the release of psychiatric/psychological medical records to unrepresented applicants.

INTRODUCTION

The Board of Retirement does not have a written policy regarding the release of psychiatric medical records to applicants who are representing themselves in the disability retirement appeals process. Currently, LACERA's Disability Litigation Office withholds psychiatric reports and records from pro se applicants unless ordered to do so by court order. Alternatively, the Disability Litigation Office provides copies of psychiatric records or reports to an unrepresented applicant's treating physician or an attorney if an applicant gives written consent to do so. LACERA's current practice of withholding evidence at the appeal level raises due process issues that may be challenged in court. It is therefore important that the Board establish a written policy that documents LACERA's position on this issue.

LEGAL AUTHORITY

The Board of Retirement has the plenary authority and fiduciary responsibility to administer the retirement system, and it holds executive, legislative, and quasi-judicial powers. It has the sole authority to determine eligibility for a disability retirement. In

administering its duties, the Board has the authority to promulgate rules, regulations, and policies.¹

BACKGROUND

Roger M. Whitby, Principal Deputy County Counsel, Opinion Letter

In 1982, the Board of Retirement sought advice from the Office of County Counsel concerning the release of psychiatric reports to applicants whose disability applications were denied and who were representing themselves. On January 4, 1983, Roger M. Whitby, Principal Deputy County Counsel, provided an opinion letter to the Board on this issue wherein he expressed concerns about release of such information in light of the case of *Tarasoff v. Regents of University of California*.² In *Tarasoff*, a psychologist employed by the University of California, his superior, and the Regents of the University were held liable for the death of a girl who was killed by a man who had confided his intention to kill her to the psychologist. The California Supreme Court held that the psychologist had a duty to use reasonable care in warning the victim of the danger.

Mr. Whitby advised that, under *Tarasoff*, it was possible that a court might hold the Board of Retirement liable for injuries resulting from the release of a psychiatric report to an applicant where it was reasonably foreseeable that release of the report might result in the injury to the applicant or some other person. He then advised the following:

. . . it is our advice that psychiatric reports should not be released to an applicant under circumstances where the therapist recommends against showing the report to the applicant and where the applicant has a history of violence, or where the therapist indicates that if the report is shown to the applicant, the applicant is likely to harm himself, the retirement staff, the therapist, or some other person.

Mr. Whitby stated that other than a situation where the therapist indicates that such harm or violence is likely to occur, the psychiatric reports would probably have to be shown to unsuccessful applicants in connection with their appeals, even if the therapist has included some general boilerplate language to the effect that the report should not be shown to the applicant. Mr. Whitby added:

We are concerned about the possible damaging psychological effects of allowing an applicant to review psychiatric reports relating to himself, as well as the effect of such a practice on your Board's ability to obtain candid reports from psychiatrists. However, we believe that the applicant's right to due process outweighs these considerations.

¹ Cal. Const., art. XVI, § 17, subd. (a) and (b); Gov. Code Sec. 31725; *Preciado v. County of Ventura* (1982) 143 Cal.App.3d 783, 789.

² *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425.

He then stated that “from a standpoint of protecting yourselves from liability, we believe that it is preferable to have a court order you to release a report rather than to have the court hold you liable for injuries resulting from releasing the report on your own volition.”

October 5, 1983 Board of Retirement Meeting

On October 5, 1983, this matter went to the Board for a vote. The initial motion was to “withhold from applicants any information where a psychiatrist has specifically said that this information should not be disclosed to the applicant.” However, several substitute motions were made and ultimately the issue was held over to the November 1983 meeting. The Board minutes from this meeting refer to an “existing Board policy with regard to the release of disability investigation packets to applicants acting in pro per who have been diagnosed as mentally or emotionally ill.” However, there is no documentation of this “existing Board policy.” A review of the minutes for the meetings from November 1983 through November 1984 failed to confirm that the Board took any action on Mr. Whitby’s opinion letter.

Disability Litigation Office Policy Regarding Release of Psychiatric Records to Unrepresented Applicants

Daniel McCoy, Chief Counsel of Disability Litigation from 1996 to 2007, authored Policies and Procedures of the LACERA Disability Litigation Office wherein he stated the following:

It is the policy of the Board of Retirement, adopting the recommendation of the Office of the County Counsel, that psychiatric reports on an applicant’s psychiatric evaluation are not to be given directly to the applicant without an order of a court.

Disability Litigation’s policy states that reports may be given to the applicant’s treating physician or to an attorney if the applicant gives, in writing, an unequivocal consent.

LACERA Currently Does Not Release Psychiatric Medical Records to Pro Se Applicants

When an applicant appeals a denial decision by the Board of Retirement, Disability Retirement Services (DRS) sends the applicant a copy of the “Board Packet” which includes a copy of the panel physician’s report(s). When the application involves a psychiatric or psychological condition and the applicant is not represented by counsel, the panel psychiatrist’s report is not included in the packet and all references to the report in the Disability Retirement Evaluation Report are redacted. The applicant is notified that the panel psychiatrist’s report is being withheld and that the report has been redacted. If an unrepresented applicant requests copies of all the medical evidence obtained by DRS, psychiatric records are not sent to the applicant and any reference to

the psychiatric evidence is redacted. Any requests for a copy of the panel psychiatrist's report is handled by the Disability Litigation Office under its above-referenced policy.

LAW

*Tarasoff v. Regents of University of California*³ is a 1976 decision which held that the parents of a murdered girl could state a cause of action against a psychologist and the hospital for which he worked when the psychologist failed to warn that his patient had threatened to kill the girl. It held that a special relationship between a doctor or psychotherapist and patient could support affirmative duties for the benefit of third persons.⁴

In *Hedlund v. Superior Court*,⁵ a 1983 decision, the minor son of a woman shot by a psychologist's patient sued for emotional injuries suffered after the assailant's therapist failed to warn him of a known threat against his mother. The son, who was seated next to his mother when she was shot, asserted the therapist owed him a duty on the theory that it was foreseeable he would be injured if the patient's threats materialized.⁶ The Supreme Court agreed. It held that a therapist's duty to warn potential victims of a patient's threatened violence extends "to persons in close relationship to the object of the patient's threat . . ."⁷

California Legislature Enacted Civil Code Section 43.92 in Response to the *Tarasoff* and *Hedlund* Decisions

County Counsel's 1983 opinion letter was written in the wake of the broad liability issues raised in the *Tarasoff* and *Hedlund* decisions. In reaction to these decisions, the Legislature in 1985 enacted California Civil Code section 43.92 which sharply limited the scope of liability for psychotherapists as defined by statute.⁸ Section 43.92(a) states the following:

There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to protect from a patient's threatened violent behavior or failing to predict and protect from a patient's violent behavior **except if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.** (Emphasis added.)

³*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425.

⁴ *Id.* at p. 433.

⁵ *Hedlund v. Superior Court* (1983) 34 Cal.3d 695.

⁶ *Id.* at p. 705.

⁷ *Id.* at p. 706.

⁸ *Ewing v. Goldstein* (2004) 120 Cal.App.4th 807, 815.

Section 43.92 represents a legislative effort to strike an appropriate balance between conflicting policy interests—the need to preserve patient confidence and protecting the safety of someone whom the patient intends to harm.⁹

California Health & Safety Code Section 123115

California Health & Safety Code Section 123115(b) allows a health care provider to decline a patient's request to review or receive mental health records when the provider **“determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient.”** Subsection (b)(1) requires the health care provider to explain the reasons for refusing to permit inspection or provide copies of the records, including a “description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.”

Health Insurance Portability and Accountability Act (HIPAA)

Under statutory authority from the Federal Health Insurance Portability and Accountability Act, the Secretary of the Department of Health and Human Services promulgated regulations to protect the privacy of medical records. 45 C.F.R. Section 164.524 sets forth an individual's right of access to protected health information. This regulation allows for a medical provider to deny access to the medical records if the provider determines **“that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person.”**¹⁰ While LACERA has been advised by outside counsel that the organization's disability operations are not subject to HIPAA, it is relevant to consider its provisions as guidance in drafting policy.

Attorney Fees

- **CERL**

Government Code section 31536 states the following:

If a superior court reverses the denial by the board of an application for a retirement allowance, or for a survivor's allowance based on such allowance, **or for a claim based on a claimed pension right or benefit**, the superior court **in its discretion** may award reasonable attorney's fees as costs to the member or beneficiary of the member who successfully appealed the denial of such application. Such costs shall be assessed against the board, shall be considered a cost of administration, and shall in no event

⁹ *Ewing v. Goldstein, supra*, 120 Cal.App.4th, 807, 816.

¹⁰ 45 C.F.R. 164.524(a)(3)(i) (Emphasis added.)

become a personal liability of any member of the board. (Emphasis added.)

In the event the applicant successfully obtains a court order for LACERA to release psychiatric/psychological records and/or reports, an applicant may be entitled to attorney fees and costs under Section 31536.

DISCUSSION

There is no documentation of a Board-adopted policy regarding the release of psychiatric medical records to applicants representing themselves. In practice, LACERA does not release psychiatric reports and records to applicants without a court order. It appears that the only written policy related to this issue is the Disability Litigation Office's policy which is based on the January 4, 1983 County Counsel opinion letter. As noted above, there have been changes in the law since this opinion was authored, so it is the Committee's recommendation that the Board adopt an updated policy.

It is important for the Board to understand that California Civil Code section 43.92, California Health & Safety Code section 123115, and the HIPAA statutes discussed above place the responsibility of determining whether or not it is safe for patients to have access to their psychiatric records on the medical provider. The common denominator in these statutes is whether or not access to the records poses a substantial risk of significant adverse or detrimental consequences to the patient or another person. While LACERA is not a medical provider, these statutes provide perspective in determining LACERA's policy on this issue.

In an appeal of a disability retirement decision, LACERA owes its members due process, and access to the report(s) upon which the Board based its decision is crucial for members to move forward in their appeals. The Board's policy must strike a balance between ensuring due process and the potential safety concerns involved in releasing psychiatric medical records.

RECOMMENDED POLICY STATEMENT

Considering these issues, the Disability Procedures & Services Committee recommends that the Board of Retirement adopt the following policy addressing the release of LACERA's panel psychiatrist's/psychologist's report and the psychiatric/psychological records obtained by DRS during its investigation:

Release of Psychiatric/Psychological Records/Reports Policy

It is the policy of the Board of Retirement, that psychiatric/psychological reports and/or psychiatric/psychological records are not to be given directly to the applicant without

confirmation from the authoring psychiatrist, psychologist, or therapist that release of the report or records does not pose a substantial risk of significant adverse or detrimental consequences to the applicant or another person. Psychiatric/psychological records and/or reports will be given to the applicant with a court order. In the event the applicant successfully obtains a court order for LACERA to release psychiatric/psychological records and/or reports, an applicant may be entitled to attorney fees and costs pursuant to Government Code section 31536.

It is recommended that the implementation of this policy be handled in the following manner:

- **Release of LACERA's Panel Psychiatric/Psychological Report**

When an applicant has appealed the Board's decision on a psychiatric/psychological claim and is not represented by an attorney, Disability Retirement Services will obtain a statement from LACERA's panel psychiatrist/psychologist stating whether or not the release of the report to the applicant would pose a substantial risk of significant adverse or detrimental consequences to the patient or another person. The physician will be required to explain the specific reasons for withholding the report.

- **Release of Psychiatric/Psychological Records Obtained by Disability Retirement Services During Its Investigation**

When an unrepresented applicant who has appealed the Board's decision on a psychiatric/psychological claim requests copies of the medical records obtained during the investigation of the application, Disability Retirement Services will not release any psychiatric or psychological records until it receives confirmation from the authoring doctor that the release of the report or records to the applicant does not pose a substantial risk of significant adverse or detrimental consequences to the patient or another person.

- **Notification of the Applicant's Right to Obtain a Court Order**

In the event LACERA denies an unrepresented applicant access to his or her psychiatric/psychological records/reports based on the above policy, LACERA will notify the applicant of his or her right to obtain a court order for these records as well as his or her right to request recovery of attorney fees and costs.

CONCLUSION

In an appeal of a disability retirement decision, LACERA owes its applicants due process, and access to the report(s) upon which the Board based its decision is crucial for applicants to move forward in their appeals. However, public policy necessitates

Re: Release of Psychiatric Medical Records

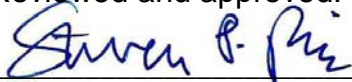
November 28, 2017

Page 8 of 8

consideration of the potential safety concerns involved in releasing psychiatric/psychological medical records. It is important that the Board establish a written policy that documents LACERA's position on this issue.

The Disability Procedures & Services Committee therefore recommends that the Board of Retirement adopt the policy statement, as described above, addressing the release of psychiatric/psychological medical records to unrepresented applicants.

Reviewed and approved.

A handwritten signature in blue ink, appearing to read "Steven P. Rice", is written over a horizontal line.

Steven P. Rice, Chief Counsel



November 29, 2017

To: Each Member
Board of Retirement

From: Disability Procedures & Services Committee
Vivian H. Gray, Chair
Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

For: December 14, 2017 Board of Retirement Meeting

Subject: **PROPOSED PANEL PHYSICIAN GUIDELINES**

RECOMMENDATION

That the Board of Retirement revise its current Panel Physician Guidelines for Evaluating Members for Disability Retirement and adopt the *Proposed* Panel Physician Guidelines as described below.

INTRODUCTION

Ricki Contreras, Division Manager, Disability Retirement Services, and Francis Boyd, Senior Staff Counsel, have had a number of discussions about streamlining the processing of members' applications for disability retirement. One factor slowing down the application process is the need to obtain supplemental medical reports from our panel physicians because some reports do not provide sufficient information for the Board of Retirement to make a decision on the application. Ms. Contreras and Mr. Boyd identified some problems with the questions included in the current Panel Physician Guidelines that contribute to the need for supplemental reports. They made adjustments to the guideline questions which are described below.

In addition to limiting the need for supplemental reports, the questions contained in the *Proposed* Panel Physician Guidelines are designed to elicit more information from the panel physician for the Board of Retirement to weigh and consider in determining an applicant's eligibility for a disability retirement.

LEGAL AUTHORITY

The Board of Retirement has the plenary authority and fiduciary responsibility to administer the retirement system, and it holds executive, legislative, and quasi-judicial powers. It has the sole authority to determine eligibility for a disability retirement. In administering its duties, the Board has the authority to promulgate rules, regulations, and policies.¹

BACKGROUND

Questions contained in the current Panel Physician Guidelines

The current Panel Physician Guidelines request that panel physicians respond to the following questions:

- (1) Is the applicant capable of performing each of the duties described in the Class Specification for the applicant's occupation?
- (2) Is the applicant substantially able to perform the usual duties of his or her actual assignment?

In this regard, an employee may not be able to perform each and every duty within the job classification, yet still be capable of **substantially performing the usual duties**. If an employee cannot substantially perform the usual duties of the job and the condition is permanent in terms of recovery, that employee is incapacitated under Retirement Law.

A disability is considered "permanent" when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment.

- a) If the employee is **permanently incapacitated**, the physician must describe which duties of the job the employee cannot perform and why the employee cannot perform them.
- b) Was the employee permanently incapacitated **at the time** he/she **left County service**?

¹ Cal. Const., art. XVI, § 17, subd. (a) and (b); Gov. Code Sec. 31725; *Preciado v. County of Ventura, et al.* (1982) 143 Cal.App.3d 783, 789.

c) If the employee is **not** permanently incapacitated, the physician must state why the employee, despite his/her claim for disability, can perform the job.

(3) Did the Applicant's employment play a role in any injury or illness that the Applicant claims to cause incapacity for duty?

If so, please state in detail how the job or job environment including industrial factors caused, aggravated, lighted up, or contributed to the condition(s) including a summary of all supportive facts. The Board will determine from your opinion whether the role was real and measurable.

A copy of the current Panel Physician Guidelines is attached to this memorandum.

Problems identified in our current Panel Physician Guidelines

- **Compound questions contained in our current Panel Physician Guidelines lead to incomplete responses and a need to obtain supplemental reports.**

Currently, we request our panel physicians to respond to three primary questions:

- 1) Is the applicant capable of performing each of the duties described in the Class Specification for the applicant's occupation?
- 2) Is the applicant substantially able to perform the usual duties of his or her actual assignment?
- 3) Did the Applicant's employment play a role in any injury or illness that the Applicant claims to cause incapacity for duty?

However, questions 2 and 3 contain a number of follow-up questions. At times, a panel physician will respond to the primary question and overlook the follow-up questions, necessitating the need for a supplemental report. One important follow-up question that is often overlooked by our panel physicians is whether or not the employment aggravated or accelerated the underlying medical condition causing the incapacity. The *Proposed Panel Physician Guidelines* listed below break up the follow-up questions into separate, distinct questions. This change combined with the requirement that the doctor repeat each question in their report, will obligate the doctor to provide the requested information in a timely manner.

- **The ability to perform each of the duties described in the Class Specification is not a requirement for a disability retirement under CERL.**

Entitlement to a disability retirement is established when members are permanently incapacitated for the performance of their usual duties, not each of the duties in the Job

Specification.² Question number one of our current Panel Physician Guidelines asks whether or not the applicant is capable of performing each of the duties listed in the Class Specification. Including this question on the Panel Physician Guidelines sometimes confuses the doctor resulting in an unclear report addressing the pertinent issue: whether applicants are capable of performing their *usual duties*. For this reason, this question has been eliminated from the *Proposed Panel Physician Guidelines* listed below.

PROPOSED PANEL PHYSICIAN GUIDELINES

In order to give the panel physician some context, the *Proposed Panel Physician Guidelines* provide a brief description of the Board of Retirement's and the doctor's roles in the application process. Thereafter, the doctor is provided with a brief summary of the standards for incapacity, permanency, service connection, as well as a comparison of retirement law versus workers' compensation law. The panel physician is then asked to respond to the following questions:

1. Is the applicant substantially able to perform the usual duties of his or her actual assignment as described in the Disability Retirement Evaluation Report? Please explain your opinion.
2. Please describe which duties the applicant can and cannot perform and explain why the duties can or cannot be performed. Please explain your opinion.
3. Is the applicant's current incapacity permanent? Please explain your opinion.

A disability is considered "permanent" when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment.

4. Was the applicant continuously incapacitated from the date he or she last worked to the date the disability retirement application was filed? If in your opinion the applicant became incapacitated after he or she last worked, please state when the incapacity began. Please explain how the medical records support your conclusion.

² Government Code section 31720; *Lindsay v. County of San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 160; *Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332; *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; *Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 694-696; *Schrier v. San Mateo County Employees' Ret. Ass'n* (1983) 142 Cal.App.3d 957, 961-962.

5. Based on your evaluation and medical history, please state what **work restrictions, if any**, (*including prophylactic*) you would recommend for the applicant. Please explain your opinion.

Please avoid using words like prolonged, light, heavy, frequent, occasional, and repetitive in any of your recommended work restrictions. Instead, provide weight limitations in pounds/ounces and time limits in terms of consecutive hours/minutes as well as total hours/minutes in a defined workday. Also, please include length of any required breaks.

6. Did the applicant's employment play a role in any injury or illness that the applicant *claims* to cause incapacity? If yes, please explain how the employment played a role in applicant's *claimed* incapacitating medical condition. **Please respond to this question even if it is your opinion that the injury or illness does not prevent the applicant from performing his or her duties.**
7. Did the employment cause any permanent aggravation and/or acceleration of any medical condition limiting the applicant's ability to perform his or her job? Please explain your opinion.
8. If it is your opinion that the applicant is permanently incapacitated for nonservice-connected reasons, please explain what factors led to the applicant's incapacitating medical condition.

A copy of the *Proposed Panel Physician Guidelines* is attached to this memorandum.

- **Explanation of Changes**

Question 1:

In the above proposed questions, the panel physician is first asked to provide an opinion as to whether or not the applicant is capable of substantially performing his or her actual assignment as described in the Disability Retirement Evaluation Report. The response to this question will provide the Board of Retirement with a medical conclusion on the relevant issue of incapacity.

Question 2:

Question two goes a step further and requests that the doctor describe the specific duties that can and cannot be performed. This information will provide the Board of Retirement, as the trier of fact, with more information to make the determination as to whether or not the applicant is in fact *substantially* able to perform the usual duties of the job.

Question 3:

Question three is a separate, distinct question asking the doctor whether or not the applicant's incapacity is permanent. Currently this question is included in a follow-up question and is sometimes overlooked by the doctor.

Question 4:

Question four asks the doctor whether or not the applicant was *continuously* incapacitated from the date last worked to the date the disability retirement application was filed. This question is designed for applications filed more than four months after the applicant discontinued service. Having this information on hand will allow staff and the Board of Retirement to determine whether the application is filed timely under Government Code section 31722 without having to go back to the doctor for a supplemental report.

Question 5:

Oftentimes, it is necessary for staff to obtain a supplemental report addressing work restrictions—this slows down the application process. Requesting this information up front will speed up the process and provide the Board of Retirement more information to make the determination as to whether or not the applicant is *substantially* able to perform the usual duties of the job.

Question 6:

Question 6 asks the doctor whether or not the employment played a role in any injury or illness that the applicant claims to cause incapacity. This is the question contained in our current Panel Physician Guidelines. The Committee may notice that question refers to an injury or illness that the applicant *claims* to cause incapacity. This phrasing requires the doctor to address causation even if the doctor opines the applicant is not incapacitated. At times, a doctor will conclude that the applicant is able to perform the usual duties of the job but issue work restrictions that cannot be accommodated by the department. Requiring the doctor to address causation even if he or she opines the applicant is not incapacitated saves staff from having to go back to the doctor to obtain an opinion on causation.

Question 7:

Question 7 requires the doctor to explain whether or not the employment caused any permanent aggravation and/or acceleration of any medical condition limiting the applicant's ability to perform his or her duties. Currently, this question is included in a follow-up question and is sometimes overlooked by the doctor.

Question 8:

In situations where the doctor finds an applicant incapacitated for nonservice-connected reasons, question 8 requires the doctor to explain how he or she came to this conclusion. The doctor's response to this question will provide more information to the Board of Retirement so that it can fulfill its role as the trier of fact.

- **Implementation of *Proposed Panel Physician Guidelines***

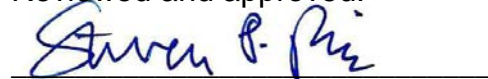
It is important that our panel physicians have a clear understanding of the changes in the Panel Physician Guidelines. Written notification of the changes and instructions will be sent to each panel physician. In addition, Disability Retirement Services (DRS) has had a discussion with Communications about preparing a short instructional video for the doctors. DRS and Legal will also be available to respond to any questions that the panel physicians may have.

CONCLUSION

The Disability Procedures & Services Committee believes that the above-proposed changes to the Panel Physician Guidelines will streamline the processing of our members' applications for disability retirement. In addition, the proposed changes will elicit more information from the panel physician for the Board of Retirement to weigh and consider in determining an applicant's eligibility for a disability retirement.

The Committee therefore recommends that the Board of Retirement adopt the *Proposed Panel Physician Guidelines*.

Reviewed and approved.



Steven P. Rice, Chief Counsel

Attachments

c: Each Member, Board of Retirement

**PANEL PHYSICIAN GUIDELINES
FOR EVALUATING MEMBERS FOR DISABILITY RETIREMENT
(Please review before completing your report)**

The Board of Retirement relies heavily upon the report by its panel physician to make a finding on applications for disability retirement. You are requested to provide the Board with your opinions, and the reasons for your opinions, on the following questions:

- (1) Is the applicant capable of performing each of the duties described in the Class Specification for the applicant's occupation?
- (2) Is the applicant substantially able to perform the usual duties of his or her actual assignment?

In this regard, an employee may not be able to perform each and every duty within the job classification, yet still be capable of **substantially performing the usual duties**. If an employee cannot substantially perform the usual duties of the job and the condition is permanent in terms of recovery, that employee is incapacitated under Retirement Law.

A disability is considered "permanent" when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment.

- a) If the employee is **permanently incapacitated**, the physician must describe which duties of the job the employee cannot perform and why the employee cannot perform them.
 - b) Was the employee permanently incapacitated **at the time** he/she **left County service**?
 - c) If the employee is **not** permanently incapacitated, the physician must state why the employee, despite his/her claim for disability, can perform the job.
- (3) Did the Applicant's employment play a role in any injury or illness that the Applicant claims to cause incapacity for duty?

If so, please state in detail how the job or job environment including industrial factors caused, aggravated, lighted up, or contributed to the condition(s) including a summary of all supportive facts. The Board will determine from your opinion whether the role was real and measurable.

Your evaluation must be based on:

- Your examination of the applicant
- Your review of the Class Specification and the Job Analysis, if available
- Your exam with the applicant to determine the actual and usual job duties and the physical requirements of the job
- Your review of the medical records
- The information provided in the Disability Retirement Evaluation Report, prepared by LACERA staff.

Note: The applicant has been instructed NOT to bring any records to the medical appointment. Should the applicant do so, please do not review them. The correct procedure is to direct the applicant to forward these documents to the Disability Retirement Specialist

assigned to his or her case. The documents will be recorded and sent to you for review. This procedure is necessary should the case go to appeal.

The opinion you provide LACERA is restricted to matters within your specialty.

However, you may identify medical conditions outside of your specialty that you believe need medical attention.

The report should include at least the following sections:

- I. **Job Description** – Your description of the applicant's job duties and its requirements.
- II. **History of Injury/Illness**
- III. **Applicant's Complaints** – Must be based on your interview of the applicant.
- IV. **Description of Examination** – Examination protocol, explanation of tests conducted, if any, and statement of findings. Include the member's height and weight in your report.
- V. **Medical History** – Review of applicant's medical history and prior injuries/illnesses.
- VI. **Review of Records**
- VII. **Diagnostic Impression**
- VIII. **Conclusions** - Present your answers to the question of whether the applicant is incapacitated and, if so, whether the incapacity is service-connected. Include the data on which you rely and the reasoning by which you progress to your conclusions.
- IX. **Contrary Opinions** – Include a statement of why you do not accept the contrary opinions of other physicians.

If LACERA receives a panel's physician's report that is unclear or does not justify the conclusions, a supplemental report may be requested.

ATTENTION MEDICAL STAFF: If any psychiatrist on our panel orders a MMPI-2 test, it should be sent to Caldwell Reports for interpretation. When Caldwell interprets the test, a copy will be sent to LACERA and the requesting physician.

All Panel Physicians: Please order MRI, CT, and selected other diagnostic imaging services through Magnetic Imaging Services, Inc. LACERA's evaluating physician should contact LACERA's case investigator/Disability Retirement Specialist for scheduling and processing. If you have any questions or need additional information, contact LACERA's Disability Retirement Services Division at **(626) 564-2419**.

PROPOSED PANEL PHYSICIAN GUIDELINES

LACERA Board of Retirement

The Los Angeles County Employees Retirement Association's Board of Retirement is a body created pursuant to the County Employees Retirement Law of 1937 (Government Code section 31450, et seq.). Among the Board's statutory duties is determining when members of the Retirement Association are eligible for disability retirement under the standards set forth in the Retirement Law. In making those determinations, the Board is bound to act consistently with its fiduciary nature—that is, in a way worthy of the trust and confidence reposed in the Board by the members of the Retirement Association. The Board's fiduciary duties extend both to the individual members of the Association, and to the membership of the Association as a whole. The duty to individual members includes the obligation to grant a disability retirement when the applicant has met all of the conditions specified in the Retirement Law. The duty to the Association as a whole includes the obligation to safeguard the Association's assets by denying a disability retirement when the applicant has not met all of the legal requisites.

Your Role in this Process

The determination of whether the applicant is entitled to disability retirement benefits is ultimately made by the Board of Retirement. To determine entitlement, the Board considers a variety of pertinent information, including your expert opinion on the medical-legal aspects of this matter. The Board requests that you (1) review the attached medical, employment, and relevant records; (2) perform a comprehensive medical examination; and (3) provide a written forensic report answering specific medical-legal questions posed by LACERA.

The Board of Retirement's decision must be based upon substantial evidence. In determining whether a medical opinion is substantial evidence, the courts have explained that the value of a medical opinion is not found simply in the physician's conclusion, but it lies on the facts on which the opinion is based and in the reasoning by which the physician progresses from the facts to the conclusion. We therefore request that you explain how the medical records and facts support your conclusion.

The Retirement Association is equally well served by a grant or a denial of benefits where the decision to do so is based on sound medical-legal conclusions. In that respect, you have not been retained for the purpose of reaching any particular conclusion, and you are expected to exercise neutral and independent judgment in evaluating the applicant's medical condition. With that standard of independence in mind, you are asked to prepare a written report that may be reviewed by staff members, referees, Board members and judicial officers who do not share your background as a medical professional. If possible, please state your opinions in lay terms with an explanation of the facts and reasoning supporting your conclusion.

COUNTY EMPLOYEES RETIREMENT LAW (CERL) DISABILITY RETIREMENT STANDARDS

To assist you in answering the specific questions posed below, the following is a brief description of some of the legal concepts applicable to disability retirement proceedings:

STANDARD FOR INCAPACITY

Incapacitated: Under disability retirement law, an applicant is incapacitated, physically or mentally, if the applicant is substantially unable to perform their usual job duties. Usual job duties are duties frequently performed, as opposed to duties performed rarely or duties that the employer does not actually require to be performed. Incapacity does not require an inability to perform all the duties listed in the Job Classification. As to a particular duty, an applicant is incapacitated from performing that duty if:

- (1) it is not physically possible for the applicant to perform the activity at all, or
- (2) even if it is possible for the applicant to perform the duty for a period of time, it is **medically probable** that performance of the duty will cause further injury.
- (3) Pain is not incapacitating if an applicant is able to actually perform the activity, even if performing it would cause some pain or discomfort, cause fear of further injury and/or, create some risk of future injury that is less than probable; however, pain can be a factor contributing to a finding of incapacity where it is **probable** that performance of the duty in question would cause pain sufficiently severe to make **performance of the duty impossible or exceedingly difficult**.

STANDARD FOR PERMANENCY

Permanent: An incapacity **is permanent** when further change in an applicant's medical condition is not medically probable.

Not Permanent: An incapacity **is not permanent** where:

- There is a medical probability that further conventional medical treatment reasonably available to the applicant will bring about a positive material change in the applicant's medical condition, without unreasonable risk to the applicant, which enables him to perform his duties.
- An applicant may not meet the permanency standard, if his refusal to accept further treatment is determined by medical opinion to be unreasonable. An applicant's refusal is usually found to be unreasonable where the medical treatment has minimal risk and it is likely to improve the applicant's condition to the point where he can perform his duties. An applicant's refusal is usually found to be reasonable where the medical treatment has substantial risk, and/or where it is not likely to significantly improve the applicant's condition, or where the applicant has bona fide religious beliefs or a medical condition that interferes with pursuit of the treatment.

STANDARD FOR SERVICE CONNECTION (industrial causation)

You are also asked to express an opinion as to whether the applicant's medical condition is service connected (industrial). Some standards for determining whether a permanent incapacity is service connected are as follows:

Service Connection:

- County employment need not be the sole cause of the incapacity, but it must make a substantial contribution to the incapacity.
- County employment is considered a substantial contribution to an applicant's incapacity where there is a real and measurable link between the County employment and the applicant's incapacity. The employment must be of some real and measurable consequence to the incapacity.
- An infinitesimal or inconsequential connection between employment and disability is not real and measurable.
- Service connection is established where the employment permanently aggravates or accelerates the underlying pathology of a pre-existing condition causing an applicant to be disabled at an earlier time than if he had not worked for the County.

Nonservice connection:

- Service connection is not found when the County employment merely causes a temporary aggravation and/or exacerbation of symptoms.
- Service connection is not found when the County employment has not played an active role in the development of the incapacity; that is, the County employment has merely been a passive stage for the natural progression of a non-industrial condition.
- Industrial causation is not proven, if there is no identifiable mechanism of injury to establish a real and measurable link between the employment and the incapacity or if reaching such a conclusion would involve speculation.

Comparison of Retirement Law and Workers' Compensation

In evaluating the applicant, please be aware of the fact that establishing "permanent incapacity" under the Retirement Law is not the same as establishing "permanent disability" under the Workers' Compensation Law. "Permanent Disability" under Workers' Compensation Law is a permanent injury that impairs a worker's earning capacity or a worker's bodily function, or that creates a competitive handicap for the worker in the open labor market.

Under disability retirement law, "permanent incapacity" for the performance of duty is the substantial inability of an applicant to perform his or her usual duties. An applicant may have a

permanent disability under the Workers' Compensation Law and not be incapacitated from duty under the disability retirement law. Similarly, a worker may be incapacitated from performing the particular duties of the applicant's position in County service even though the applicant is able to perform other jobs in the open labor market.

Your Report

Your written report should contain discussion of the items listed below, as well as a discussion of the specific medical-legal questions set forth at the end of this letter.

Please note the opinion you provide LACERA is restricted to matters within your specialty. However, you may identify medical conditions outside your specialty that you believe may need medical attention.

Job Description	Please include your description of the applicant's usual job duties and its requirements. Please use the description provided by LACERA staff in the Disability Retirement Evaluation Report.
History of Injury/Illness	Include a summary of the applicant's medical history pertaining to the subject injury or illness and the source(s) of that information.
Applicant's Complaints	Based on your interview of the applicant, please provide a discussion of the applicant's current complaints relevant to the conditions the applicant applied for disability retirement.
Description of Examination	Examination Protocol requires an explanation of tests conducted, if any, and statement of findings, including a discussion of your objective findings upon examination. Findings should explain how the medical evidence supports your conclusions. Please include the applicant's height and weight in your report.
Medical History	Please provide a review of applicant's medical history and prior injuries/illness.
Review of Records	Your report should include a comprehensive summary of all the pertinent records sent to you by LACERA.
Diagnostic Impression	Please provide a discussion of your impression/diagnoses.
Contrary Opinions	Include a statement of why you do not accept the contrary opinions of other physicians.

Finally, please answer **ALL** Medical – Legal Questions posed below. **Your report should first restate each question and then provide a response.**

MEDICAL – LEGAL QUESTIONS

1. Is the applicant substantially able to perform the usual duties of his or her actual assignment as described in the Disability Retirement Evaluation Report? Please explain your opinion.
2. Please describe which duties the applicant can and cannot perform and explain why the duties can or cannot be performed. Please explain your opinion.
3. Is the applicant's current incapacity permanent? Please explain your opinion.

A disability is considered "permanent" when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially with or without medical treatment.

4. Was the applicant continuously incapacitated from the date he or she last worked to the date the disability retirement application was filed? If in your opinion the applicant became incapacitated after he or she last worked, please state when the incapacity began. Please explain how the medical records support your conclusion.
5. Based on your evaluation and medical history, please state what **work restrictions, if any, (including prophylactic)** you would recommend for the applicant. Please explain your opinion.

Please avoid using words like prolonged, light, heavy, frequent, occasional, and repetitive in any of your recommended work restrictions. Instead, provide weight limitations in pounds/ounces and time limits in terms of consecutive hours/minutes as well as total hours/minutes in a defined workday. Also, please include length of any required breaks.

6. Did the applicant's employment play a role in any injury or illness that the applicant *claims* to cause incapacity? If yes, please explain how the employment played a role in applicant's *claimed* incapacitating medical condition. **Please respond to this question even if it is your opinion that the injury or illness does not prevent the applicant from performing his or her duties.**
7. Did the employment cause any permanent aggravation and/or acceleration of any medical condition limiting the applicant's ability to perform his or her job? Please explain your opinion.
8. If it is your opinion that the applicant is permanently incapacitated for nonservice-connected reasons, please explain what factors led to the applicant's incapacitating medical condition.

Your evaluation must be based on:

- Your examination of the applicant
- Your review of the Job Description in the Disability Retirement Evaluation Report and/or Class Specification/Job Analysis, if available
- Your review of the medical records and relevant records provided
- The information provided in the Disability Retirement Evaluation Report, prepared by LACERA staff.

If LACERA receives a panel physician report that is unclear, does not justify the conclusions, or does not follow the panel physician guidelines, a supplemental report may be requested. **The supplemental report will be prepared at the expense of the panel physician.**

Your report is privileged and confidential and should not be released to any person or entity under any circumstances – even if subpoenaed – without authorization from this office.

December 6, 2017

TO: Each Member
Board of Retirement

FROM: Steven P. Rice *SPR*
Chief Counsel

FOR: December 14, 2017 Board of Retirement Meeting

SUBJECT: Interviews and Selection of Federal Legislative Advocacy Services
Provider

RECOMMENDATION

That the Board of Retirement (Board) conduct interviews of the three finalists on the Federal Legislative Advocacy Services Request for Proposals (RFP), and select a firm to perform such services.

LEGAL AUTHORITY

The Board's oversight of legislative affairs and legislative advocacy on health, benefit, and plan administration issues is within the plenary authority and fiduciary duty of the Board under Article XVI, Section 17 of the California Constitution to administer the plan, giving precedence to the interests of members and their beneficiaries. Board oversight concerning these legislative issues is consistent with the Board's Legislative Policy and Engagement Policy. The Insurance, Benefits & Legislative Committee (Committee) ordinarily has the initial responsibility to address these issues and make a recommendation to the Board. In this case, the Board Chair determined, after notice to the Committee Chair, that this matter should do directly to the Board so that the successful firm will have an adequate opportunity to prepare for the January 2018 Offsite, where there will be a presentation and discussion on federal engagement. The Board has the final authority to select such vendors as are needed to assist in the performance of its duties.

DISCUSSION

A. Background.

On May 11, 2017, the Board approved issued of an RFP for federal legislative advocacy services. The RFP was authorized based on the Board's recognition that legislative and regulatory action by the federal government can have significant impact on the plan and its members. The Board further recognized that retention of an experienced and knowledgeable federal legislative advocate will enable the Board and the Committee to

stay informed of federal legislation, develop appropriate principles, policies, and procedures reflecting LACERA's desired level of legislative activism, and implement legislative strategies with respect to specific issues. A federal legislative advocate will help LACERA to maintain credibility in Washington, D.C. and make sure that LACERA's voice is heard when needed. The federal legislative advocate will supplement, as appropriate, existing legislative resources from LACERA's retiree healthcare consultant, Segal, and legislative coordination that takes place with the retiree healthcare program insurers. A copy of the RFP is attached as Attachment 1.

LACERA received seven responses from qualified Washington, D.C. firms: Alston & Bird; Capitol Counsel; Groom Law Group; K & L Gates; Steptoe & Johnson; Thompson Coburn; and Williams & Jensen.

A five-member staff team with representatives from the Retiree Healthcare Division, Member Services, Benefits, and the Legal Division evaluated the proposals based on four criteria: (1) Experience, Approach, and Success, including experience in performing legislative advocacy on federal issues relevant to LACERA, substantive knowledge of federal issues, and relevant experience; (2) Assigned Professionals, including professional qualifications and samples of written work; (3) Other Criteria, including conflicts of interest, claims, and insurance; and (4) Fees and Costs, Billing Practices, and Payment Terms, including the fee amount and length of contract.

The evaluation team selected three finalists to be interviewed by the Board, in alphabetical order: Groom Law Group; K & L Gates; and Williams & Jensen.

The candidates will each give a 15-minute presentation to the Board, followed by questions. The Board may then deliberate and make a selection or provide staff with other direction.

B. Information About Finalists.

1. Groom Law Group.

Groom is a Washington, D.C. law firm of over 85 lawyers specializing public and practice sector benefits issues. The firm's Policy and Legislation Group has 11 members. The firm's public pension practice has included representation of California funds. The firm is active in the National Association of Public Pension Plan Attorneys (NAPPA) and other public pension organizations, including as speakers in providing education on public pension issues. The firm works on benefits-related policies, legislation, and regulations with members of Congress and the Executive Branch, including a health care reform legislation and regulations, tax reform, and defined benefits plan issues. The firm keeps

its clients informed of legislative and regulatory developments through email reports and memos; samples are attached to its RFP. The team proposed by Groom to serve LACERA includes subject matter experts with public policy experience in federal agencies, including: Pensions & Employment Counsel for the Senate Committee on Health, Education, Labor & Pensions; Tax Counsel for Majority Staff on the House Ways and Means Committee; Group Director and Director positions in the Centers for Medicare & Medicaid Services (CMS) in the U.S. Department of Health & Human Services; and Benefits Counsel in the Office of Tax Policy in the Treasury Department. The firm's offers a retainer model at an initial fee of \$12,000 per month or an hourly rate model, with fees of \$750 per hour for senior attorneys and \$550 per hour for junior attorneys and policy staff.

The firm's PowerPoint for the meeting and its RFP response are attached to this memo as Attachment 1.

2. K & L Gates.

K&L Gates is an international law firm of over 2,000 lawyers, with a Washington, D.C. public policy group of more than 50 lawyers and government affairs professionals. The firm has broad experience in representing different types of entities in connection with federal public policy issues such as health reform, tax reform, entitlement reform, financial services, reform, regulatory activity, and oversight and enforcement, including in the pension area. The firm is actively engaged in providing federal advocacy services in the legislative and executive branches. The firm provides written federal policy updates and analysis memos as relevant to its clients' needs. The firm's LACERA team includes members with government experience and political engagement across the political spectrum, including: General Counsel for Speaker of the House of Representatives; Steering Committee of the Congressional Black Caucus Political Action Committee; Senate Committee on Finance; Internal Revenue Service; and Regional Director for the Democratic National Committee; advisor to the Trump Transition Team; and Office of Government Relations for NASDAQ. The firm also includes former members of Congress, both Senate and House, Democrat and Republican, who are available to assist when needed. The firm proposes a monthly retainer of \$22,500; the firm is willing to negotiate its fees if selected.

The firm's PowerPoint for the Board meeting and its RFP response (redacted to eliminate proprietary information on specific legislative client engagements and other confidential information) is attached as Attachment 2. The firm also provided several writing samples on specific issues and projects that are proprietary; while those samples are not included here; they were of high quality.

3. Williams & Jensen.

Williams & Jensen is a Washington, D.C. law firm of 20 principals and a team of associates and government affairs specialists. The firm's primary focus is providing lobbying and related governmental advocacy services. The firm has 20 years of experience in representing public pension systems, including CalPERS, Houston Firefighters' Relief and Retirement Fund, Ohio Policy & Fire Pension Fund, and Tennessee Consolidated Retirement System. The firm emphasizes the California congressional delegation contacts it has established through its work for CalPERS. The firm also advises the National Conference on Public Employee Retirement Systems (NCPERS). For these clients, the firm handles issues related to federal legislative and regulatory matters related to their retirement plans. The firm publishes legislative memos for clients, and sample written work is attached to its RFP. The proposed lead attorney for LACERA publishes frequently on public pension issues and is a frequent speaker at organization such as NCPERS, NAPPA, and the National Association of State Retirement Administrators (NASRA). The firm offers the services of a subcontractor, Doucet Consulting, with additional expertise in health issues, at no additional fee. The firm's LACERA team has government experience, including: staff positions with members of the House; and Tax Counsel to the House Ways and Means Committee. The firm proposes a retainer of \$15,000 per month as a starting point for discussions.

The firm's RFP response is attached as Attachment 3; it does not have a separate PowerPoint.

C. Evaluation Scoring.

The evaluation team sought to evaluate the candidates on two core skills: first, the skill and experience to assist LACERA with the legislative and regulatory process, including knowledge of the process and the ability to facilitate access to and effective communication with decision-makers; and second, a strong base of substantive knowledge and experience in the issues relevant to LACERA.

To accomplish this result, the finalists were evaluated on a 100-point scale as follows:

40% Experience, Approach & Success

- Experience performing legislative advocacy on federal issues
- Substantive knowledge of federal issues
- Experience relevant to services requested

40% Assigned Professionals

- Professional qualifications

Samples of written work

10% Other

Conflicts of interest

Claims

Insurance

Other additional information provided

10% Fees and Costs, Billing Practices, and Payments Terms

Fee amount

Length of contract

Based on this scoring matrix, all three finalists were judged to be strong and worthy of Board consideration. The evaluation team scored the finalists as follows:

Groom Law Group	78
K & L Gates	82
Williams & Jensen	85

CONCLUSION

Based on the information provided in this memo and its attachments, the Board of Retirement should interview the three finalists on the Federal Legislative Advocacy Services RFP, and select a firm to perform such services.

Attachments

- c. Robert Hill
- James Brekk
- John J. Popowich
- Bernie Buenaflor
- Steven P. Rice
- Cassandra Smith
- Leilani Ignacio
- Barry Lew

ATTACHMENT A
Groom Law Group



Los Angeles County Employees Retirement Association

Interview Presentation

December 14, 2017



Today's Topics

- The Groom Team
- What Distinguishes Groom
- Understanding The Board's Priorities and Goals
- Working With LACERA
- Recent Successes
- Knowledge Base



The Groom Team

- A Team With Deep Governmental Plan Experience
- Members
 - Lisa Campbell
 - Diana Hodges
 - Michael Kreps
 - David Levine
 - Rachel Levy
 - Brigen Winters



What Distinguishes Groom

- Experience and Relationships
- Large Benefits-Focused Team
- Subject Matter Expertise
- Uniquely DC Centered and Focused
- Wide Breadth of Client Resources Combined With Tailored Approaches For Each Client's Needs
- Practicality In Providing Advocacy Services
- Bipartisan and Non-Partisan Ties



Understanding The Board's Priorities and Goals

- Meeting With The Board In Person Quarterly
- Telephone And Videoconferencing Meetings
- Development Of Annual Legislative and Regulatory Priority Plans With The Board
- Proactive Outreach Without Inundating The Board With Fire Alarms When New Topics Emerge



Working With LACERA

- Groom's Legislative and Policy Update Newsletter
- Hot Topic Alerts and Briefings
- Monthly Customized Updates on LACERA-Specific Topics
- Organizing Washington, DC Fly-Ins For Meetings With Legislative and Regulatory Representatives
- Focusing On Practical Deliverables To Build LACERA's Legislative Presence



Recent Successes

- The SOS Coalition and Tax Reform
 - Our Focus On UBIT Issues
- Strengthening Legislative Presence – Plan Sponsor Council of America
- Cadillac Tax Delay
- Example of Current Activity:
Lobbying on Governmental Health Reimbursement Account Guidance



Knowledge Base

- We Are Technical Experts . . . Not Just Lobbyists
- Our Large Governmental Plans Practice
 - Both Health and Retirement Depth
- Involvement and Ties Across Industry
 - AICPA, ARA, CIEBA, ECFC, GFOA, NAGDCA, NAPPA, NASRA, NCTR, PSCA, WISER, ABC

GROOM LAW GROUP

David N. Levine
(202) 861-5436
dlevine@groom.com

June 21, 2017

By Federal Express

LACERA
Attention: Barry Lew
Legislative Affairs Officer
300 North Lake Avenue, Suite 620
Pasadena, CA 91101

Re: Response to LACERA Request for Proposal

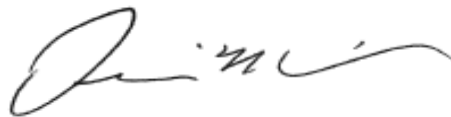
Dear Mr. Lew:

On behalf of Groom Law Group (“Groom”), I am pleased to respond to the Request for Proposal issued by the Los Angeles County Employees Retirement Association (“LACERA”) for Federal Legislative Advocacy Services Concerning Health, Pension, and Plan Administration Issues. Enclosed is our response to the Request for Proposal.

As a Principal at Groom, I am empowered and authorized to bind Groom to an engagement agreement with LACERA. The information stated in the proposal is accurate and may be relied upon by LACERA in considering, and potentially accepting, the proposal.

We appreciate the opportunity to submit this proposal. Please contact me at (202) 861-5436 or dlevine@groom.com if you have any questions.

Very truly yours,



David N. Levine

2. Executive Summary

Groom was founded in 1975 and is the leading benefits law firm in the United States with nationally known experts in all areas of benefits law – fiduciary, tax, health and welfare, legislation and litigation. We have focused on benefits issues, including plan drafting and advice, administrative practice before governmental agencies, state and federal court litigation, and advice and drafting of benefits legislation under consideration by state and federal legislative bodies. As explained further below, Federal legislative advocacy services is a key area of service at our firm.

Each of Groom’s over 80 attorneys is dedicated solely to health and retirement benefits matters – including legislation. Our client base is diverse, ranging from state and local government retirement systems to Fortune 100 companies to tax-exempt organizations. These include more than 100 plan sponsors and benefit service providers across the United States. We have over 40 years of experience in this area and offer a depth and quality of expertise in employee benefits that no other firm can match.

All of Groom’s attorneys are located in a single office in Washington, DC. Having a single location means we can quickly and efficiently provide access to attorneys who are among the most experienced in the nation in any particular aspect of employee benefits law. Because of our size, our focus on benefits-related matters, and the nature of our client base, the value proposition that Groom brings to LACERA is the ability to respond quickly, with practical, tested advice, to any questions and issues. In the legislative context, we marry our leading technical expertise in health and retirement matters with our deep legislative connections and skills to create effective legislative strategies and outcomes for our clients.

The fact that we specialize exclusively in benefits matters means that we have one strategic mission as a firm – building the most complete benefits firm in the country that can handle planning, compliance, litigation and lobbying for all benefits issues. We are not part of a much larger full service firm with competing priorities and objectives. All of our resources are committed to providing excellent, responsive employee benefits advice to our clients.

3. Experience, Approach, and Success

The proposal must provide a detailed statement of the respondent's experience and accomplishments in providing legislative advocacy services on Federal issues, including, if subject to disclosure, information concerning such work performed for other public pension systems. LACERA's goal in the RFP process is to obtain a comprehensive understanding of the respondent's experience, approach, and success in providing such services. LACERA is also interested in how the respondent differentiates themselves from other firms offering similar services.

Groom's practice is entirely focused on benefits matters. Our firm services as counsel to a number of the largest public pension plans in the United States. Groom works on providing legislative advocacy services on behalf of public pension systems, trade associations, financial institutions, plan sponsors, and other clients from the benefits community. We also keep clients informed of legislative and regulatory developments and trends that help them evaluate how potential policy changes would impact their employee benefit plans and arrangements. We enclose a few examples of our Legislative & Policy Update in Tab 1 with our response.

The attorneys in Groom's Policy and Legislation group have extensive experience in helping clients navigate through legislative and regulatory issues concerning employee benefit matters and developing effective responses to these issues. They have developed a reputation as leading advocates for clients with a stake in federal legislation or regulatory guidance. Our attorneys have a unique insight into the legislative and regulatory process that attorneys at a few firms have. We monitor and actively lobby on federal legislation affecting retirement and welfare benefits, assisting clients through advocacy with the appropriate federal agencies and Congress. We help clients analyze and respond to legislative and regulatory proposals and present their views and concerns on those proposals. We draft talking points and position papers for use in communicating with members of Congress and their staff and with staff of the regulatory agencies. In addition, we help prepare testimony to be used at Congressional and agency hearings and, at times, Groom attorneys deliver that testimony.

Many of our attorneys (including 4 of the attorneys we propose to be on the LACERA Team) are former staff from all of the federal agencies that regulate benefit plans as well as Congressional committees with jurisdiction over benefits issues, including attorneys who previously served as:

- Administrator of Pension and Welfare Benefits at the Department of Labor
- Associate Benefits Tax Counsel at the Treasury Department
- General Counsel of the Pension Benefit Guaranty Corporation
- Senior Legislative Officer at the Department of Labor
- Chief pension litigator at the Department of Labor
- ERISA Counsel to the Senate Committee on Labor and Human Resources

June 21, 2017

Page 4

- Senior Pensions & Employment Counsel to the Senate Committee on Health, Education, Labor & Pensions
- Tax Counsel on the majority staff of the House Committee on Ways and Means

Our attorneys maintain valuable contacts with the IRS, DOL, PBGC, Securities and Exchange Commission, Health and Human Services, and Congressional staff personnel to spot developing issues and address potentially sensitive matters, including on a “no-name” basis. We meet with senior regulators on an informal basis, including in regularly scheduled discussion group meetings in Washington and in social settings. These relationships give us insights into the way regulators would approach particular issues, afford us the opportunity to discuss issues on an informal and candid basis with government officials, and foster a level of mutual respect that is very helpful in negotiating positive outcomes to ruling requests and enforcement actions involving our clients.

4. Assigned Professionals

The proposal must set forth the name of the project lead and all other professional staff expected to be assigned to the LACERA work, including a detailed profile of each person’s background and relevant individual experience and the ability of the professionals collectively to function as a team and also to work effectively with the Board, the IBLC, and staff in performing the scope of services.

Groom has a wide-ranging governmental plans practice with approximately 25% of our attorneys regularly advising our governmental plan clients, although many more of our attorneys are involved with governmental plans on a periodic basis when their expertise is relevant (e.g., when we have issues relating to governmental plan litigation, we have a group of dedicated benefits litigators who have depth and experience in litigating benefits-related claims for governmental plans and entities).

We take a team approach to providing services to our clients to ensure that we provide legal advice that is efficient, timely, and practical. David Levine will be the team lead and primary contact with respect to the LACERA relationship and will be available to discuss all projects with LACERA as needed or requested. Notably, David already has an active practice representing plan sponsors on legislative advocacy matters for the Plan Sponsor Council of America.

Below we provide the members of the team and their detailed biographies are enclosed in Tab 2 with this response. We are happy to provide further information on other Groom attorneys who might be called out to assist the team if their subject matter expertise could assist in creating high quality and efficient support for LACERA.

June 21, 2017

Page 5

Team Members

- David Levine, Team Lead
- Lisa Campbell
- Diana Hodges
- Michael Kreps
- Rachel Levy
- Brigen Winters

5. References

In this section, the proposal must identify as references at least three (3) public pension systems, public entities, or other reference for which the respondent has provided federal legislative advocacy services on Federal issues, including, for each reference, an individual point of contact, the length of time the respondent served as legislative advocate, and a summary of the work performed.

While we advise individual plans and entities, often our legislative and regulatory activities are undertaken on behalf of groups and/or coalitions. We highlight a number of groups/coalition efforts below.

<p>Reference:</p> <p>Steve McCaffrey Head of PSCA Legislative and Lobbying Committee Stephen.McCaffrey@nationalgrid.com</p>	<p>Groom Point of Contact: David Levine, Brigen Winters</p> <p>Length of Time Groom has Served as Legislative Advocate: 9 months</p> <p>Summary of Work: Groom is responsible for working with PSCA leadership to design and implement legislative policy initiatives on health and retirement issues, including meetings with legislative and regulatory staff.</p>
<p>Reference:</p> <p>Wendy Wolf Vice President of Government Affairs ADP TotalSource Wendy.Wolf@adp.com</p>	<p>Groom Point of Contact: Brigen Winters</p> <p>Length of Time Groom has Served as Legislative Advocate: 5 years</p> <p>Summary of Work: Groom is responsible for working with ADP and ADP TotalSource on a wide range of legislative policy initiatives on health, retirement and tax issues.</p>

<p>Reference:</p> <p>Save our Savings Coalition</p> <p>Brian Graff CEO American Retirement Association bgraff@usaretirement.org</p>	<p>Groom Point of Contact: Michael Kreps, David Levine, Brigen Winters</p> <p>Length of Time Groom has Served as Legislative Advocate: 1 year</p> <p>Summary of Work: Groom has helped organize and lead a coalition cutting across the entire retirement spectrum focused on advocating for the existing retirement system as part of the consideration of Federal tax reform.</p>
--	--

6. Fees and Costs, Billing Practices, and Payment Terms

The respondent must explain the pricing proposal for the scope of work including pricing of fees and costs, billing practices, and payment terms that would apply assuming a five (5) year initial duration of the engagement as well as any additional period during which the engagement may extend. LACERA does not place any limits on the approach to pricing and is open to presentation of more than one pricing alternative for the scope of work, or portions of it. For example, the respondent might propose a monthly fixed fee, with special projects to be performed on an hourly rate basis. This section of the response should include an explanation as to how the pricing approach(es) will be managed to provide the best value to LACERA. The respondent should represent that the pricing offered to LACERA is, and will remain, equivalent to or better than that provided to other governmental clients, or should provide an explanation as to why this representation cannot be provided. All pricing proposals should be “best and final,” although LACERA reserves the right to negotiate on pricing.

We recognize that many governmental plans often prefer to utilize alternative fee arrangements for their legislative activities. We work actively with our clients to have a proactive discussion of work product and fee expectations because we know that each client’s projects and staffing needs are unique. Below, we provide further information on both alternative fee arrangements and our hourly fee schedule.

Retainer Model

Our most common method for legislative engagements is to work on a monthly retainer basis with special project activities being completed on an hourly or one-off fixed fee basis. Recognizing that this RFP contemplates an expansion of LACERA’s existing activities involving

June 21, 2017

Page 7

federal legislative activities, we would propose an initial retainer of \$12,000/month but suggest having a methodology to review/revise (in either direction) the cost of the retainer depending on actual utilization of Groom resources every 6 to 12 months.

Hourly Rate Model

We propose to perform services on a blended rate basis as follows:

Attorney	Proposed Blended Rate
Principals and Of Counsels	\$750
Associates and Policy Staff	\$550

We would propose revisiting this rate schedule every two years with the first revision being effective July 1, 2019. If a fixed rate through June 30, 2022 is required, we are happy to propose various pricing models subject to the approval of our Executive Committee.

7. Conflicts of Interest

The proposal must identify all actual or potential conflicts of interest that the respondent may face in the representation of LACERA. Specifically, and without limitation to other actual or potential conflicts, the proposal should identify any representation of the County of Los Angeles, Los Angeles Superior Court, Los Angeles County Office of Education, the South Coast Air Quality Management District, Little Lake Cemetery District, and Local Agency Formation Commission, and, to the respondent’s knowledge, any of LACERA’s members, vendors, other contracting parties, investments, and employees. The proposal should also identify any positional conflicts of which the respondent is aware.

We do not expect any current matters will create a conflict of interest in providing services to LACERA.

With respect to potential conflicts, although our firm, as a boutique law firm, does not engage in the sort of broad litigation and corporate representation that frequently give rise to conflicts at other firms, we do represent a broad range of public and corporate employers with regard to their retirement and health plans, as well as financial institutions, insurers, and others providing services to employers and plans. Our broad range of clients is one of our strengths – it allows us to stay up-to-date on a variety of complicated and technical issues of interest to all of our clients and to provide our clients with information about industry best practices. However, from time to time, conflict issues may arise. We have a process for identifying those conflicts, and, where such conflicts arise, we handle those conflicts in a manner consistent with the rules for professional conduct and the terms of our engagement letters, and if a waiver or notice is required, to arrive at the appropriate resolution in full consultation with our clients.

8. Claims

The proposal must identify all past, pending, or threatened litigation, and all administrative, ethics, and disciplinary investigation or other proceedings and claims against the firm and any of the professionals proposed to provide services to LACERA, whether while such professionals were employed by the firm or employed elsewhere.

There are no pending or threatened litigation against Groom, nor have any been filed in the last three years. The RFP does not specify a timeframe, but to the extent that it seeks information dating back longer than three years, discrete legal proceedings involved matters entirely unrelated to Groom's provision of legal services, which have been resolved (i.e., a wrongful termination claim brought by a former shareholder and a dispute over fees paid during a former client's pre-bankruptcy preference period).

9. Insurance

The proposal must explain the insurance that the respondent will provide with respect to the services to be provided and other acts or omission of the firm and its staff in performing legislative advocacy services for LACERA.

Groom maintains significant professional liability insurance coverage with CNA as its primary carrier. The firm also carries excess fiduciary liability insurance policies with Liberty Surplus Insurance and with Catlin/Alterra Specialty.

10. Samples of Written Work

The proposal may contain samples of the respondent's written work relating to legislative advocacy on Federal Issues.

As noted above, we have enclosed examples of our regular Washington update for clients. In addition, we include materials we have prepared and utilized for the Save our Savings coalition in Tab 3 with this response.

11. Other Information

The proposal may contain any other information that the respondent deems relevant to LACERA's selection process.

Value-Added Client Services. We are committed to communicating relevant changes in the law to our clients and we offer our clients a wide variety of complimentary educational seminars and training events. Below, we describe complimentary services we offer, as we believe that such services significantly add to the value that we provide.

June 21, 2017

Page 9

- Client Alerts. We provide our clients with frequent and timely email updates on current developments that may be of interest. These include in-depth summaries of judicial, legislative and regulatory developments in the retirement plan, health and welfare, fiduciary, and executive compensation areas.
- Groom Seminar. Groom offers an annual complimentary seminar in Washington, DC on recent developments in employee benefits. This seminar is now in its twenty-first year and has been well-received by clients, attracting between 100 and 150 attendees each year. Course materials for the program consist of detailed outlines and summaries of the latest legislative, regulatory, and judicial developments prepared by the firm's attorneys. The materials provide useful reference and source materials that have value to attendees well after the seminar is completed. This substantive seminar also qualifies for CLE credit.
- Webinars. We periodically offer free webinar discussions throughout the year on current developments in various areas such as fiduciary matters, legislative matters, qualified plans, health and welfare benefits, and other issues of particular concern to our clients.
- Client Visits. We often work with clients to provide periodic in-person updates and assist with training programs to meet evolving statutory and regulatory requirements that may impact a client's particular industry or plan structure. In certain circumstances, we can arrange for these training programs to qualify for continuing legal education credit.

Tab 1

June 20, 2017

GROOM LEGISLATIVE & POLICY UPDATE

Key Issues: Affordable Care Act (“ACA”) Repeal and Replace, Tax Reform, Treasury RFI, 403(b) Disclosures, Legislation.

It was a muted week on the Hill after last Wednesday’s shooting. Lawmakers continue to address a number of priorities, including the budget, debt ceiling, healthcare, and tax reform efforts.

ACA Repeal and Replace. Senate Republicans have two weeks left before their self-imposed deadline of the July 4th recess to negotiate and find 50 votes for the Senate’s version of ACA repeal and replace legislation. With a number of thorny issues like Medicaid and the timing to repeal certain ACA taxes still not resolved, lawmakers are running out of time to come to a policy consensus and get a bill scored by the Congressional Budget Office before their self-imposed July deadline. The artificial deadline could easily be extended, but Republicans need to finish healthcare before they move on to tax reform. As Senate Majority Whip John Cornyn (R-TX) said last week, “Putting it off is not going to make it any easier. A deadline is helpful because it tends to make people focus.”

Minority Leader Chuck Schumer (D-NY) recently sent a letter to Majority Leader Mitch McConnell (R-KY) asking for the Senate to convene in the Old Senate Chamber for an open discussion on a way forward on healthcare. Democrats and even some rank-and-file Republicans have said the current process is too secretive.

On Thursday during a Senate Health, Education, Labor and Pensions (“HELP”) Committee hearing, HELP Chairman Lamar Alexander (R-TN) urged the Trump Administration to continue making cost-sharing reduction payments for another two years. House Ways and Means Chairman Kevin Brady (R-TX) made the same request the week before.

A new [study](#) released by institutes at the George Washington University estimates that the AHCA, as passed by the House, would result in 1 million jobs lost over the next decade.

Tax Reform. On Tuesday, June 13, House Ways & Means Chairman Kevin Brady (R-TX) suggested a five-year phase-in of the proposed border adjustment tax (“BAT”). The conservative-leaning Tax Foundation estimated that a five-year transition would decrease the amount of money that the provision raises by \$220 billion over ten years. The proposed phase-in did not appear to appease opponents or Republican members who have expressed concerns with the BAT proposal.

Also on Friday, Senate Finance Chairman Orrin Hatch (R-UT) [requested](#) feedback from stakeholders on tax reform. Submissions can be emailed to taxreform2017@finance.senate.gov by July 17.

Treasury RFI. On Wednesday, June 14, the Treasury Department released a [Request for Information](#) seeking comment on regulations that could be eliminated or streamlined in order to

comply with President Trump's "two-for-one" administrative guidance executive order. The deadline for submissions is July 31.

403(b) Disclosures. A [bill](#) passed this month by the Connecticut state legislature requires retirement plan administrators to disclose fees and compensation to participants of state and municipal 403(b) plans. The chairman of the state House Banking Committee introduced the bill after a series of [reports](#) in the *New York Times* chronicled the high fees associated with the retirement options available to Connecticut teachers.

Legislation.

- The House passed three narrow bills last week related to healthcare.
 - [H.R. 2372](#) allows veterans to retain eligibility for ACA subsidies if the AHCA becomes law.
 - [H.R. 2579](#) allows tax credits available under the American Health Care Act to be applied to COBRA plans.
 - [H.R. 2581](#) requires individuals to verify their income eligibility and citizenship or legal immigration status with the Social Security Administration before accessing premium tax credits.
- Senators Warren (D-MA), Lee (R-UT), Wyden (D-OR), and Scott (R-SC) introduced the Graduate Student Savings Act of 2017. The legislation would allow paid graduate students to save a portion of their stipends in an IRA. Specifically, it would amend section 219(f) of the Internal Revenue Code to allow "any amount paid to an individual to aid the individual in the pursuit of graduate or postdoctoral study or research" to be considered compensation for purposes of determining qualified retirement contributions to individual retirement plans. The bill was previously included in the Retirement Enhancement and Savings Act, which was unanimously approved by the Senate Finance Committee last year.

The Week Ahead. House Speaker Paul Ryan (R-WI) will give his "first major speech for tax reform" on Tuesday to the National Association of Manufacturers.

For more information about the Groom Legislative & Policy Update, contact [Michael Kreps](#), [Brigen Winters](#), [Rachel Leiser Levy](#), [Kevin Walsh](#), [Ryan Temme](#) or [Diana Hodges](#).

June 12, 2017

GROOM LEGISLATIVE & POLICY UPDATE

Key Issues: Affordable Care Act (“ACA”) Repeal and Replace, Fiduciary Rule, Tax Reform, CHOIC Act, Church Plan Decision, Nominations and Staffing.

After a Memorial Day recess where many lawmakers faced difficult town halls over the American Health Care Act (“AHCA”), Congress returned last week ready to work.

ACA Repeal and Replace. On Monday, June 6, the Senate Budget Committee announced that the Republican AHCA bill complied with budget reconciliation rules that would allow the bill to pass the Senate with 51 votes, rather than the typical 60-vote threshold, clearing a procedural hurdle that Democrats had hoped might stop the bill.

The Senate continues to craft a plan that it hopes can appease both moderate and conservative Republicans. As they look for middle ground, the idea of a "glide path" to wind down the ACA's enhanced federal funding for Medicaid expansion is gaining steam. Republican Senators Dean Heller (NV), Rob Portman (OH), and Shelley Moore Capito (W.V.) are endorsing a seven year wind-down, while Senate Majority Leader Mitch McConnell (R-KY) has promoted a three year plan. The Senate may settle on a window in the middle. The AHCA, as passed in the House, begins cutting expansion funds in 2019.

While the Senate cobbles together a legislative fix, some insurers have withdrawn from certain ACA exchange markets, citing ongoing uncertainty around federal payment of the ACA's cost-sharing reductions (“CSRs”). There is considerable uncertainty regarding the government's continued funding of CSR payments. During Thursday's budget hearing, Health and Human Services Secretary Tom Price declined to say whether the Administration will continue to make CSR payments. In response, House Ways and Means Committee Chairman Kevin Brady (R-TX) said, "We should act within our constitutional authority now to temporarily and legally fund cost-sharing reduction payments as we move away from Obamacare. Insurers have made clear the lack of certainty is causing 2018 proposed premiums to rise significantly."

On Thursday, June 8, the Centers for Medicare and Medicaid Services (“CMS”) posted a [request for information](#) to the public on ways to encourage more young, healthy people to enroll in health plans, reduce premium costs, expand competition, and shift regulatory responsibility to the states. There is a 30-day window for individuals and groups to submit comments to CMS.

Fiduciary Rule. After Secretary Acosta's surprise [announcement](#) declining to further delay the Fiduciary Rule, the Securities and Exchange Commission (“SEC”) [invited](#) the public to comment on how the agency could develop standards of conduct for investment advisers and brokers. "I believe an updated assessment of the current regulatory framework, the current state of the market for retail investment advice, and market trends is important to the Commission's ability to evaluate the range of potential regulatory actions," SEC Chairman Jay Clayton said in a statement.

Meanwhile, lawmakers have introduced parallel legislation in the Senate and House to repeal the rule. On June 8, Sen. Johnny Isakson (R-GA) introduced the Affordable Retirement Advice Protection Act ([S.1321](#)), a re-introduction of a bill from 2016. The legislation would block the Fiduciary Rule and implement an alternative fiduciary standard requiring advisors to serve in their clients' "best interests." The bill is cosponsored by Republican Senators Alexander (TN), Enzi (WY), Hatch (UT), Roberts (KS), Scott (S.C.), and Young (IN). Also on June 8, Rep. Phil Roe (R-TN), member of the House Committee on Education and the Workforce, and Rep. Peter Roskam (R-IL), chairman of the Ways and Means Subcommittee on Tax Policy, introduced the Affordable Retirement Advice for Savers Act ([H.R. 2823](#)). The bill is a combination of legislation the two representatives have previously introduced. The House and Senate bills are substantially similar.

Tax Reform. There still seems to be no consensus on how to proceed with tax reform. The House Republican tax reform blueprint has faced stiff opposition for its border adjustment tax, but the lack of other revenue raising options may be its greatest strength. Rep. Devin Nunes (R-CA), said “We've been at this for a decade, they [the Trump Administration] have been at this for a few months... I don't think there's going to be any other way to do tax reform. We've tried all the other ways ... and every day that goes by, [the Ryan-Brady plan] gets better and better.”

Meanwhile, the Freedom Caucus and Senate Finance Chairman Orrin Hatch (R-UT) both appear to be open to the idea of unpaid-for tax cuts. On Friday, June 9 while speaking to the conservative Heritage Foundation, Freedom Caucus member Rep. Jim Jordan (R-OH) suggested that tax cuts need not be deficit neutral. Rep. Mark Meadows (R-N.C.), the Freedom Caucus Chairman, has likewise suggested letting tax cuts expire after nine years. Senator Hatch echoed the sentiment on Wednesday, saying, “Personally, I don't see a problem with a tax reform proposal that loses revenue in the short-term if we can show that it will help put our economy on a better growth path.”

“Rothification” of the 401(k) system continues to be targeted as a potential pay-for for tax cuts, though there is growing sentiment that the measure would fail to raise revenue outside the ten-year budget window. The Save Our Savings Coalition has mounted an aggressive advocacy campaign to educate members on the retirement industry’s concerns with the idea. (For more information about the Save Our Savings Coalition, contact any of the attorneys listed below.)

CHOICE Act. The House passed the Financial CHOICE Act ([H.R. 10](#)) last week. The bill would, among other things, repeal the Fiduciary Rule. The bill passed on a party-line vote, and it is not expected to be taken up by the Senate.

Church Plan Decision. On Monday, June 5, the United States Supreme Court held in *Advocate Health Care Network et al. v. Stapleton et al.* that a plan does not have to be established by a church in order to qualify for ERISA’s church plan exemption. Instead, plans maintained by certain tax-exempt organizations that are controlled by or associated with a church may qualify as church plans. The decision was unanimous, with Justice Sotomayor filing a concurring opinion. Justice Gorsuch took no part in the decision. Although the Supreme Court resolved this key threshold question, the Court left open certain other legal issues under the church plan

exemption that could lead to continued litigation in the lower courts. Please see [our memo](#) for further information.

Nominations & Staffing.

- On May 26, Labor Secretary Alexander Acosta formally named Wayne Palmer as his chief of staff. Mr. Palmer, a former chief of staff to former Sen. Rick Santorum (R-PA), began working at the Labor Department Jan. 20 as a temporary political official.
- On Wednesday, June 7, the Senate Finance Committee held a hearing on the nominations of Eric Hargan to be deputy secretary of Health and Human Services, David Malpass to be a Treasury undersecretary, Andrew Maloney to be a Treasury undersecretary, and Brent McIntosh to be Treasury general counsel.

The Week Ahead. On Tuesday, June 13, the Senate Budget Committee will hold a hearing on the Trump Administration's FY18 budget. Treasury Secretary Mnuchin will testify. Also on Tuesday, the Senate Small Business and Entrepreneurship Committee will hold a hearing on "Tax Reform: Removing Barriers to Small Business Growth."

For more information about the Groom Legislative & Policy Update, contact [Michael Kreps](#), [Brigen Winters](#), [Rachel Leiser Levy](#), [Kevin Walsh](#), [Ryan Temme](#) or [Diana Hodges](#).

Tab 2

T: 202-861-5436
F: 202-659-4503
E: dlevine@groom.com



David N. Levine
Principal

PRACTICES

Plan Design and Taxation
Plan Funding and Restructuring
Governmental Plans
Multiemployer/Taft-Hartley Plans
Executive Compensation
Fiduciary Responsibility

EDUCATION

J.D., University of Pennsylvania Law School
B.A., with general and departmental honors, Johns Hopkins University

BAR & COURT ADMISSIONS

District of Columbia
New York

David N. Levine advises plan sponsors, advisors, and other service providers on a wide range of employee benefits matters, from retirement and executive compensation to health and welfare plan matters.

Mr. Levine's areas of service include: the redesign of complex pension, defined contribution, and executive plans arising out of merger and acquisition activities; ongoing, day-to-day counseling of companies with respect to retirement and executive plan issues; in-depth compliance reviews of corporate qualified and non-qualified retirement plans; guidance on retirement plan issues relating to the Age Discrimination in Employment Act; design, implementation, and maintenance of governmental and tax-exempt organization retirement and welfare benefit programs; and representation of tax-exempt organizations with respect to issues involving corporate governance, executive compensation, and unrelated business income tax liability.

His significant projects have included the integration of more than 20 distinct defined benefit plans into a single, simplified plan document while addressing protected benefit issues relating to each of the merged defined benefit plans, the drafting of a unique "plain-English" plan documents for use by both legal and human resources departments, thus eliminating the need for complex interpretive manuals, and the design of specimen nonqualified deferred compensation and tax-deferred annuity plans for institutional service providers.

HONORS & DISTINCTIONS

Listed, *Chambers USA: America's Leading Lawyers for Business*, Employee Benefits and Executive Compensation (2008-2017)

Listed, *The Best Lawyers in America*, Employee Benefits Law (2013-2017)

Listed, *The Legal 500 US*, Employee Benefits and Executive Compensation (2008-2014)

Leading Lawyer, *The Legal 500 US*, Tax Law, Employee Benefits (2008)

Listed, *Super Lawyers*, Employee Benefits, Tax (2013-2017)

Biography Continued

Listed, Lawdragon's Guide to World-Class Employment Lawyers (2014)
Member, BNA Tax Management Compensation Planning Advisory Board
Contributing Author, *ERISA: A Comprehensive Guide (3rd Edition)*
Contributing Author, *403(b) Answer Book*
Editorial Contributor, NAPA Net — The Magazine
Editorial Contributor, "Employee Benefits Corner," *TAXES - THE TAX MAGAZINE*
Editorial Contributor, *Employee Benefit News Legal Alert*

PROFESSIONAL AFFILIATIONS

Past Chair, IRS Advisory Committee on Tax Exempt and Government Entities (ACT)
Chair, Legislative Subcommittee, Employee Benefits Committee, Tax Section, American Bar Association
General Counsel, Japan-America Society of Washington, DC

T: 202-861-6612
F: 202-659-4503
E: lcampbell@groom.com



**Lisa M.
Campbell**
Principal

PRACTICES

Health and Welfare

EDUCATION

J.D., The Catholic University of America Columbus School of Law Certificate, Law and Public Policy Program, The Catholic University of America Columbus School of Law
B.S., University of Pittsburgh School of Nursing

BAR & COURT ADMISSIONS

Admitted in Maryland only; practice limited to federal matters

Lisa M. Campbell is a principal at Groom Law Group, Chartered. Ms. Campbell advises clients on all aspects of the Affordable Care Act (ACA), including the insurance market reforms, qualified health plan standards, Exchange rules, consumer assistance programs for the Federal Marketplace, and ACA §1557 Nondiscrimination rules. She also works with clients on the Federal Mental Health Parity and Addiction Equity Act (MHPAEA). She represents health insurance companies, employers, consultants and trade associations on federal laws regulating health coverage, and provides advice on advocacy with federal agencies, compliance programs, federal government enforcement, and regulatory initiatives.

Ms. Campbell is the former Director of the Compliance and Enforcement Division for the Oversight Group at the Center for Consumer Information and Insurance Oversight (CCIIO) at the Department of Health & Human Services (HHS), and immediately prior to joining Groom, she was the Group Director for the Consumer Support Group at CCIIO. In her positions at HHS, Ms. Campbell worked closely with all key stakeholders, including health insurance companies, state insurance regulators, the Departments of Labor and Treasury, trade associations and consumer groups.

As Director of the Compliance and Enforcement Division, Ms. Campbell managed the team responsible for compliance and enforcement of private health insurance coverage. Ms. Campbell directed the implementation of the enforcement program for the ACA market reform provisions, led work related to implementing program and policy initiatives for the requirements of the ACA and other federal requirements, and provided technical assistance to States, health insurance companies, trade associations, and consumer groups on the ACA.

As Group Director of the Consumer Support Group, Ms. Campbell was responsible for implementing consumer assistance programs for the federal Marketplace, including the Navigator, non-Navigator enrollment assistance personnel, and Certified Application Counselor programs, casework, and reporting of plan data. She was responsible for coordinating on the policy

Biography Continued

and implementation of the Summary of Benefits and Coverage (SBC) and Internal Appeal and External Review requirements.

Previous government experience includes working as a Senior Policy Analyst and Senate Budget & Taxation Committee Counsel for the Maryland General Assembly, Department of Legislative Services. Prior to working for the State of Maryland, she was an attorney in the Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration at the Department of Labor (DOL) working on pre-ACA health care laws, including HIPAA, WHCRA, NMHPA, and MHPA.

Ms. Campbell speaks regularly on MHPAEA and the ACA, including presentations relating to enforcement and ACA Section 1557 Nondiscrimination requirements.

HONORS & DISTINCTIONS

Next Generation Lawyers, *The Legal 500 US*, Healthcare: Health Insurers (2017)

PREVIOUS EXPERIENCE

Group Director, Consumer Support Group, Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, U.S. Department of Health & Human Services

Director, Compliance and Enforcement Division, Oversight Group, Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, U.S. Department of Health & Human Services

Senior Policy Analyst and Committee Counsel, Department of Legislative Services, Maryland General Assembly

Regulation Attorney, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Department of Labor

T: 202-861-6650
F: 202-659-4503
E: dhodges@groom.com



Diana A. Hodges
Senior Policy Advisor

PRACTICES

Policy and Legislation

EDUCATION

LL.M., Taxation with Employee Benefits Certificate, Georgetown University Law Center

J.D., University of Mississippi School of Law

B.A., University of North Carolina at Chapel Hill

BAR & COURT ADMISSIONS

District of Columbia

Diana Hodges serves as Senior Policy Advisor in the Policy & Legislation group, where she focuses on industry advocacy efforts and legislative and regulatory developments.

Previously, Ms. Hodges served as Policy Director for the Texas Senate Committee on State Affairs during the 84th Legislature. In that role, she worked extensively with state retirement agencies and employee groups to address funding and administrative requirements for the state's pension and health plans. During her tenure, the legislature remedied a \$7.5 billion unfunded liability for the Employees Retirement System without making benefit design changes. Immediately prior to joining Groom, Ms. Hodges worked on executive compensation and Affordable Care Act matters at a major accounting firm.

Before attending law school, Ms. Hodges was a communications officer in the United States Army and served in Iraq and Afghanistan. She is a member of the vestry at the Church of St. Clement in Alexandria and is an active Georgetown alumna as a speaker and mentor to current LL.M. students.

PREVIOUS EXPERIENCE

Policy Director, Committee on State Affairs, Texas Senate

Law Clerk, United States Senate Committee on Health, Education, Labor & Pensions

Judicial Intern, The Honorable S. Allan Alexander, United States District Court for the Northern District of Mississippi

T: 202-861-5415
F: 202-659-4503
E: mkreps@groom.com



**Michael P.
Kreps**
Principal

PRACTICES

Policy and Legislation
Plan Funding and Restructuring
Fiduciary Responsibility
Multiemployer/Taft-Hartley Plans
Governmental Plans

EDUCATION

J.D., *with honors*, The George Washington University Law School
B.A., *with distinction*, University of Colorado, *Phi Beta Kappa*
Sorensen Institute Political Leaders Program

BAR & COURT ADMISSIONS

District of Columbia

Michael P. Kreps is a principal at Groom Law Group, where he counsels employers, plan sponsors, financial institutions, trade associations, and coalitions on retirement, health, tax, and employment matters. Mr. Kreps specializes in issues relating to public policy, fiduciary responsibility, and plan funding and restructuring.

Previously, Mr. Kreps served as the Senior Pensions and Employment Counsel for the U.S. Senate Committee on Health, Education, Labor, and Pensions from the 110th through the 114th Congresses. In that role, he managed all aspects of the Committee's retirement agenda and had primary staff responsibility for pension legislation, including the pension investment provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the funding stabilization and Pension Benefit Guaranty Corporation reform provisions of the MAP-21 Act of 2012, the Pension Relief Act of 2010, and the CSEC Pension Flexibility Act. He also led the Committee's oversight of regulatory activities involving employee benefit plans.

Mr. Kreps is a frequent speaker and writer on retirement and health policy. He holds a JD, with honors, from The George Washington University Law School and a BA, with distinction, in history and art history from the University of Colorado. He is active in his local community as a member of the Alexandria Commissions on Aging and Human Rights and is member of the Sorensen Institute Political Leaders Program's class of 2015.

PREVIOUS EXPERIENCE

Senior Pensions & Employment Counsel, United States Senate Committee on Health, Education, Labor & Pensions

PROFESSIONAL AFFILIATIONS

National Academy of Social Insurance
American Bar Association, Section of Taxation
Alexandria Commission on Aging

T: 202-861-6613
F: 202-659-4503
E: rlevy@groom.com



**Rachel Leiser
Levy**
Principal

PRACTICES

Health and Welfare
Policy and Legislation

EDUCATION

J.D., University of Chicago Law
School
B.A., *magna cum laude*, Yeshiva
University Stern College, *Dean's List*

BAR & COURT ADMISSIONS

District of Columbia

Rachel Leiser Levy is principal at Groom Law Group, Chartered, where she advises clients on a wide range of federal tax issues affecting health and welfare plans and retirement plans. Ms. Levy specializes in all tax aspects of the Affordable Care Act, including the “Cadillac Tax”, employer shared responsibility, the new tax reporting requirements of the Internal Revenue Code sections 6055 and 6056, and premium tax credits and cost-sharing reductions. Ms. Levy also works with cafeteria plans, tax nondiscrimination rules and VEBA’s. Ms. Levy’s expertise extends to retirement plans, where she advises clients on executive compensation, qualified plans and pension plan funding issues. Ms. Levy provides advice to employers, service providers and trade associations on legislative and regulatory strategy.

Immediately prior to joining Groom Law Group Ms. Levy was Associate Benefits Tax Counsel in the Office of Tax Policy at the US Department of the Treasury. As Associate Benefits Tax Counsel, Ms. Levy helped develop tax policies and guidance related to the taxation of employee benefits with a primary focus on implementation of the Affordable Care Act. Her work included guidance on the employer mandate, the premium tax credits and cost-sharing reductions, and the new tax reporting requirements of Internal Revenue Code sections 6055 and 6056. In her role at Treasury, she coordinated with IRS, DOL, HHS, and the White House Domestic Policy Counsel on all aspects of health care reform implementation, and advised the Office of General Counsel and the Department of Justice on a range of litigation related to the Affordable Care Act.

Prior to her time at the Treasury Department, Rachel was Legislation Counsel at the Joint Committee on Taxation, where she assisted in the development and drafting of numerous pieces of legislation, including the Patient Protection and Affordable Care Act, the Health Care and Education Reconciliation Act of 2010, the American Workers, State, and Business Relief Act of 2010, the American Jobs and Closing Tax Loopholes Act of 2010, the American Recovery and Reinvestment Act of 2009, the Emergency

Biography Continued

Economic Stabilization Act of 2008, and the Worker, Retiree, and Employer Recovery Act of 2008 among other legislation.

HONORS & DISTINCTIONS

Listed, *The Legal 500 US*, Healthcare: Health Insurers (2017)

Articles Editor, *University of Chicago Legal Forum*

Member, *University of Chicago Law Review*

PREVIOUS EXPERIENCE

Associate Benefits Tax Counsel, Office of Tax Policy, U.S. Department of the Treasury

Attorney-Advisor, Office of Tax Policy, U.S. Department of the Treasury

Legislation Counsel, Joint Committee on Taxation

T: 202-861-6618
F: 202-659-4503
E: bwinters@groom.com



**Brigen L.
Winters**
Principal

PRACTICES

Policy and Legislation
Health and Welfare
Executive Compensation
Plan Design and Taxation
Multiemployer/Taft-Hartley Plans

EDUCATION

LL.M., Taxation, with Employee
Benefits Certificate, Georgetown
University Law Center
J.D., University of Virginia School of
Law
B.A., *summa cum laude*, James
Madison University

BAR & COURT ADMISSIONS

District of Columbia

Brigen L. Winters is a principal at Groom Law Group, Chartered, where he chairs the firm's Policy and Legislation practice group. Mr. Winters counsels employers, plan administrators, financial institutions, insurers, trade associations, and coalitions on health and welfare, retirement, tax, and executive compensation issues, and on regulatory and legislative matters.

Mr. Winters returned to Groom in 2002 after serving as majority tax counsel to the House Committee on Ways and Means, where he was responsible for all issues related to retirement, health, executive compensation, insurance, and tax-exempt organizations. He uses his many years of "inside the beltway" experience and his knowledge of substantive and procedural issues to assist clients on compliance issues and obtaining favorable outcomes through regulatory guidance from the Internal Revenue Service and Departments of Treasury, Labor, and Health and Human Services and legislative amendments from Congress.

Mr. Winters' practice includes the full range of laws that affect the administration of health and welfare benefit plans, cafeteria plans, health reimbursement, health savings and flexible savings accounts, retiree medical plans, private exchanges, and health funding arrangements. He works extensively on health care reform compliance, reporting, product design, and public policy matters related to the Affordable Care Act. Mr. Winters counsels clients on all aspects of tax-qualified and individual retirement plans, including plan design and administration, tax and ERISA, and multiemployer and single-employer pension plan funding issues. He also counsels clients regarding the design and administration of executive deferred compensation plans, equity and long-term incentive plans, and rabbi trust and other funding arrangements, including the design and administration of nonqualified deferred compensation plans, supplemental executive retirement plans (SERPs), change in control and severance arrangements, employment agreements, bonus plans, and equity awards in compliance with Internal Revenue Code sections 409A, 162(m), 3121(v), 83, 280G, and 457A.

Biography Continued

Mr. Winters is a frequent speaker and writer on issues in the health, retirement, executive compensation, and tax areas. He is often quoted in trade and national publications and co-writes a column, *Second Opinions*, on health care reform issues for Plan Sponsor's newsletter and magazine.

HONORS & DISTINCTIONS

Listed, *The Legal 500 US*, Employee Benefits & Executive Compensation (2007, 2011-2014)

Listed, *The Legal 500 US*, Healthcare (2015)

Health Care Reform Editorial Contributor, "Second Opinions," *Plan Sponsor Newsletter and Magazine*

PREVIOUS EXPERIENCE

Tax Counsel, Majority Staff, U.S. House Committee on Ways and Means

PROFESSIONAL AFFILIATIONS

Fellow, American College of Employee Benefits Counsel

American Benefits Council

Tab 3



For Immediate Release

April 4, 2017

Contact: Diana Hodges

Phone: 202-861-6650

Email: info@saveoursavings.org

New Coalition to Protect Americans' Retirement Savings Launches

Washington, D.C. – Today, a diverse group of advocates and businesses is launching the Save Our Savings Coalition, an alliance dedicated to protecting Americans' retirement savings as Congress plans a comprehensive tax overhaul.

"Tax reform is a worthy goal that, if done right, could present policymakers a unique opportunity to preserve and enhance the system that's helped millions of hardworking Americans save for retirement. On the other hand, misguided proposals could unintentionally undermine the incentive for employers to offer retirement plans or for working people to save," said Jim McCrery, former Ranking Member of the Ways and Means Committee.

Research shows that Americans overwhelmingly support tax incentives for retirement savings: 80% of households who have a retirement account say its positive tax treatment is a big incentive to contribute, and about 90% of households oppose both taking away the tax advantages of retirement accounts and reducing the amount individuals can contribute to retirement accounts. "Congress should be focused on policies that will expand and improve the private retirement system," Rep. McCrery continued.

Nationwide, 75% of private sector workers are offered a workplace retirement plan and 82% of workers who are offered a workplace retirement plan choose to participate. The convenience of being able to contribute directly to a retirement plan through payroll deduction makes it easy for millions of Americans to save for retirement.

"We need to make sure people continue to have access to retirement plans," said former Representative Charles Boustany, who served on the House Ways and Means Committee for eight years, "because everyone deserves the opportunity to retire with dignity and financial independence." The private retirement system is particularly important for middle class families, with 80% of participants in workplace defined contribution retirement plans earning less than \$100,000 annually.

Savings are an important driver of economic growth. At the end of 2016, U.S. retirement assets totaled \$25.3 trillion invested in the equity and fixed income markets, making American capital markets the largest and most liquid in the world. Those dollars power the economy by giving businesses the necessary funds to create more goods and services.

The membership of the SOS Coalition includes: American Benefits Council, American Retirement Association, Committee on Investment of Employee Benefit Assets, Defined Contribution Institutional Investment Association, Employee Benefit Research Institute, Financial Services Roundtable, Investment Company Institute, New Economics for Women, Northern Trust, Plan Sponsor Council of America, Principal, SPARK Institute, TIAA, and Women's Institute for a Secure Retirement.

The SOS Coalition will work to ensure Americans continue to have access to the private sector retirement system and to meaningful savings incentives. For more information, visit saveoursavings.org.

Save Our Savings

PROTECTING AMERICANS' RETIREMENT



As Congress undertakes tax reform, we have one request: save our savings.

The existing private sector retirement system allows middle class Americans to make the most of their retirement dollars.

Today's employer-based retirement system is working.

The convenience of being able to contribute directly to an employer-sponsored retirement plan through payroll deduction makes it easy for millions of Americans to save for retirement. In fact, 80% of households who have a retirement account say its tax treatment is a big incentive to contribute, and about 90% of households oppose both taking away the tax advantages of retirement accounts and reducing the amount individuals can contribute to retirement accounts¹.

We want you to know that...

...retirement plans help the economy: at the end of 2016, U.S. retirement assets totaled \$25 trillion in the equity and fixed income markets². These contributions help make our capital markets the largest and most liquid in the world, giving businesses the necessary funds to create more goods and services.

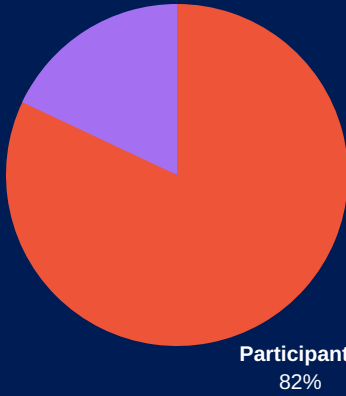
...existing tax rules prohibit retirement plans from favoring highly compensated employees, ensuring the plan's benefits are spread across the workforce.

...retirement plans are tax-deferred, not tax-exempt. Money deferred today will be taxed tomorrow, often at a higher rate than if it had been taxed today.

Lawmakers today can help preserve, enhance, and expand the system that's benefited millions of Americans.

SAVEOURSAVINGS.ORG

Non-participants
18%



75% of private sector workers are offered a retirement plan at work and 82% of workers who are offered a workplace retirement plan choose to participate ³.



70% of workers earning \$30,000 to \$50,000 participate in an employer-sponsored plan when one is offered. When there is no workplace plan offered, only 5% of workers in that income bracket contribute on their own to an IRA ⁴.

Over \$200k

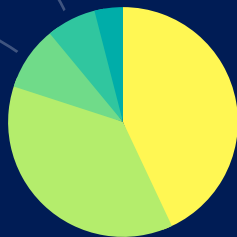
4%

\$150k to \$200k

7%

\$100k to \$150k

9%



Under \$50k

43%

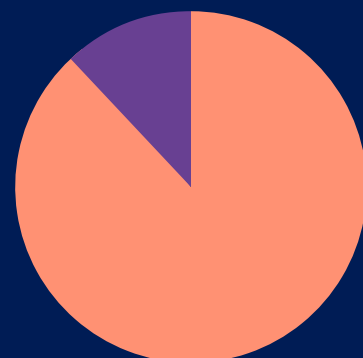
\$50k to \$100k

37%

The retirement system benefits the middle class: 43% of participants in workplace defined contribution plans earn less than \$50,000 annually; 80% earn less than \$100,000 ⁵.

88% of defined contribution participants are in plans with employer contributions ⁶.

Without
12%



With Employer
88%

1) "American Views on Defined Contribution Plan Saving, 2016," Investment Company Institute, page 7, 11.

2) https://www.ici.org/research/stats/retirement/ret_16_q4

3) "Retirement Plan Coverage by Firm Size: An Update," Social Security Bulletin, Vol. 75, No. 2, page 45.

4) Based on unpublished estimates by the Employee Benefits Research Institute.

5) Written testimony of Judy A. Miller, Executive Director of American Society of Pension Professionals & Actuaries to the Senate Finance Committee, Feb. 26, 2014. Available at <http://www.finance.senate.gov/hearings/retirement-savings-for-low-income-workers>

6) Employee Benefits Research Institute Issue Brief #426, page 14.

A Tale of Three Savers

The Retirement Tax Incentive at Work

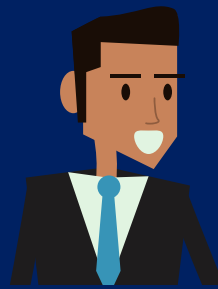
Sally, John, and Maria are 30 years old and single. They each earn \$50,000 annually and want to save 10% for retirement.



Sally saves her 10% in an after-tax investment account, meaning she only has \$4,208 to invest.¹



By not taking advantage of tax-preferred savings options, Sally will lose thousands of dollars over her lifetime.



John saves his \$5,000 in a traditional IRA because he's heard about tax benefits.



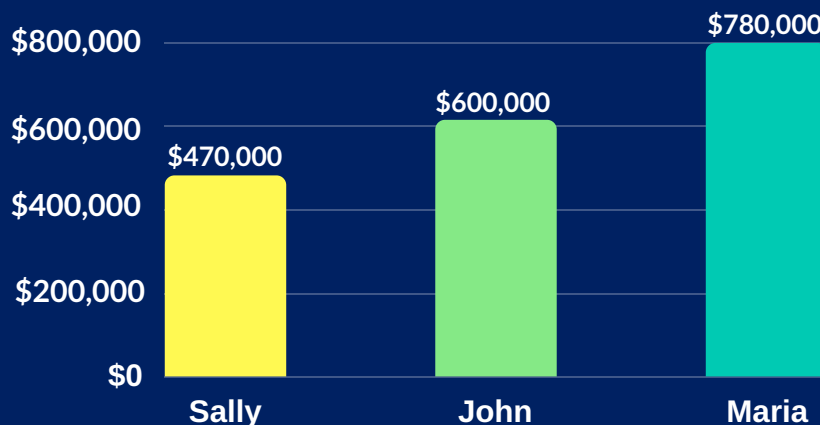
Smart John! Saving pre-tax dollars in a retirement account will help his money grow.



Maria saves her \$5,000 in her 401(k) at work because her employer offers a 3% match.



This means Maria's annual investment is \$6,500. Go Maria!



When Sally, John, and Maria retire at age 65, their accounts have very different balances.²

Sally, John, and Maria are all doing the right thing by saving for retirement, but it's the tax incentive for saving that makes such a difference in their account balances. Over her lifetime, Maria's workplace retirement plan helps her save \$300,000 more than Sally, who isn't taking advantage of existing tax incentives, and nearly \$200,000 more than John, who is saving on his own in an IRA. A workplace retirement plan with employer contributions to a tax-advantaged account gives Americans the best opportunity to adequately save for retirement. Let's work together to preserve, enhance, and expand the system that helps millions of people.

1) Assumes a combined federal and state average tax rate of 15.85%.

2) After-tax values represented. Rounded to the nearest \$10,000. Assumes Sally pays 15.85% tax annually throughout her working years on 7% interest income. Assumes account balances for John and Maria would also be subject to a 15.85% tax, which is the assumed rate at which annual withdrawals would be taxed.



April 5, 2017

The Honorable Tom Cotton
Chairman
Subcommittee on Economic Policy
Committee on Banking, Housing,
and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Heidi Heitkamp
Ranking Member
Subcommittee on Economic Policy
Committee on Banking, Housing,
and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Re: The Current State of Retirement Security in the United States

Dear Chairman Cotton and Senator Heitkamp:

The Save Our Savings Coalition, an alliance of advocates and businesses dedicated to protecting Americans' retirement savings as Congress undertakes tax reform, thanks the Committee for its attention to the issue of retirement security. Our priority is ensuring Americans will continue to have access to the private sector retirement system and to meaningful savings incentives, two items critical to retirement security in this country.

Millions of Americans are covered by the private sector retirement system, which makes it an integral building block of retirement savings. Seventy-five percent of private sector workers are offered a retirement plan at work and 82% of those workers who are offered a plan choose to participate¹. And employers play a vital role in helping their workers save for retirement, with 88% of defined contribution participants belonging to plans with employer contributions². The private sector system is working to help Americans save.

The existing private sector retirement system benefits everyone, especially middle class families. Eighty percent of participants in workplace defined contribution plans earn less than \$100,000 annually³. Access to a private sector retirement plans is a key step toward building retirement security for workers earning \$30,000 to \$50,000: when an employer-sponsored plan is offered, 70% of workers in that bracket participate, but when no workplace plan is offered, only 5% of those workers will contribute on their own to an IRA⁴.

¹ "Retirement Plan Coverage by Firm Size: An Update," Social Security Bulletin, Vol. 75, No. 2, page 45.

² Employee Benefits Research Institute Issue Brief #426, page 14.

³ Written testimony of Judy A. Miller, Executive Director of American Society of Pension Professionals & Actuaries to the Senate Finance Committee on February 26, 2014. Available at <http://www.finance.senate.gov/hearings/retirement-savings-for-low-income-workers>

⁴ Based on unpublished estimates by the Employee Benefits Research Institute.

We hope the committee will take steps to help preserve, enhance, and expand the system that's helping millions of hardworking Americans save for retirement. Thank you again for your attention to this issue, and we look forward to a positive working relationship. If you or your staff have further questions, please contact info@saveoursavings.org.

Sincerely,

The Save Our Savings Coalition

ATTACHMENT B
K & L Gates

The logo for K&L GATES, featuring the company name in white, uppercase, sans-serif font on a solid orange rectangular background.

K&L GATES

A photograph of the United States Capitol building in Washington, D.C., showing the iconic dome and classical columns under a clear blue sky. An American flag is visible on the right side of the building.

Proposal for Federal Legislative Advocacy Services

Los Angeles County Employees Retirement Association (LACERA)

Karishma Page
Jim Walsh

Bill Kirk
Corbin Santo

OUTLINE

- Policy Landscape: Risks & Opportunities
- Our Proposed Approach
 - Priorities
 - Communication
 - Advocacy
 - Long-Term Investment
 - Forward-Leaning Partnership
- Who We Are
- Recent Work & Successes



POLICY LANDSCAPE: RISKS & OPPORTUNITIES



Tax Reform



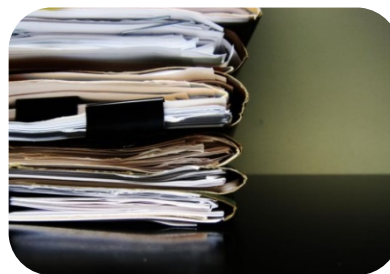
Health Reform



Entitlement
Reform



Financial
Services Reform



Regulatory
Activity



Oversight &
Enforcement



PROPOSED APPROACH: COLLABORATION ON PRIORITIES

Develop LACERA Priorities and Strategic Engagement Plan

- Assess current state of play
- Work collaboratively to identify and develop retirement and health care policy priorities
- Develop and proactively implement strategic engagement plan
 - Congress
 - Administration
 - Third-Party Stakeholders
- Continually identify emerging opportunities and threats, revisit priorities on a regular basis



PROPOSED APPROACH: 24/7 COMMUNICATION

Regularly Update LACERA Stakeholders

- Regularly scheduled updates and analysis on legislative and regulatory developments, supplemented with timely updates on breaking developments
- Continuous coordination and updates on status of projects and activities
- Interactions with LACERA would include:
 - regular contact with Board, Committees, and staff through email and calls;
 - preparation of monthly reports; and
 - in-person attendance at Board and/or Committee meetings at least quarterly



PROPOSED APPROACH: PROACTIVE, NIMBLE ADVOCACY

Advance LACERA's Priorities, while Elevating LACERA's Profile

- Develop phased Capitol Hill, Administration outreach plan
- Engage in direct legislative and regulatory advocacy
- Coordinate lobby days with LACERA Board and staff
- Develop messaging/communications on policy priorities
- Build policymaker support
- Communicate with and build support among coalitions and third-party advocates as needed
- Enhance LACERA's profile through testimony, similar opportunities



PROPOSED APPROACH: LONG-TERM ADVOCACY INVESTMENT

Continuously Build/Strengthen Key Bipartisan, Bicameral Policymaker Relationships

- CA Delegation
- House/Senate Republican/Democratic Leadership, Committees of Jurisdiction
- Key Congressional Conferences/Caucuses
- Opinion Leaders on Key Issues
- “Next Generation” of all of the above
- Key Administration Officials



PROPOSED APPROACH: A FORWARD-LEANING PARTNER

- Collaborative, proactive, strategic approach
- Deep and diverse subject matter experience in retirement, health care, and related issues
- Extensive experience working with pensions and benefits plans, including in public sector, and with related stakeholder groups
- Strong working relationships with full spectrum of bipartisan, bicameral lawmakers and Administration officials
- 360-degree understanding of issues, process, and politics
- Top-tier resources to keep stakeholders informed
- Highly communicative, responsive, and user-friendly



CORE LACERA TEAM



Karishma Shah Page
Team Lead, Benefits



William A. Kirk
Tax, Congressional
Black Caucus



**Fmr. Congressman
Jim Walsh (R-NY)**



Corbin T. Santo
Health Care



Mary Burke Baker
Tax



Daniel F.C. Crowley
Financial Services



Nicholas A. Leibham
CA Delegation



Peter V. Nelson
Tax & Retirement



Eric A. Love
Financial Services



Lauren M. Flynn
Team Coordinator



ADDITIONAL TEAM MEMBERS



**Fmr. Senator
Slade Gorton (R-WA)**



**Fmr. Congressman
Bart Gordon (D-TN)**



**Fmr. Congressman
John McHugh (R-NY)**



**Emanuel L. Rouvelas
Senate Democrats**



**Steven R. Valentine
Senate Republicans**



**Stacy J. Ettinger
Senate Democrats**



**Dennis Potter
House Republicans**



**Amy Carnevale
Health Care, Labor &
Employment**



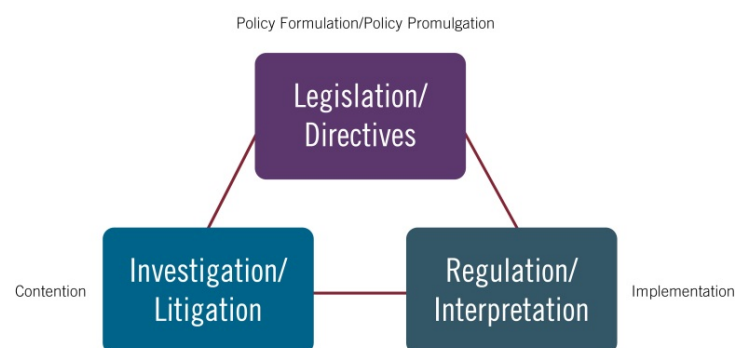
**Dennis Stephens
Administration, House
Republicans**



OUR POLICY GROUP: A SNAPSHOT

- We have more than **50 bipartisan lawyers and policy professionals with 500 years of combined government experience**—including **4 former Members, White House officials, counsels to two Speakers of the House**, congressional committee counsels, senior executive branch officials, congressional chiefs of staff, leadership staff, senior counsel at various government agencies, senior gubernatorial aides, military officials, and others
- We understand policy issues from every direction—**substantively and politically**—and use the collective knowledge and experience of a global law firm to think strategically about potential solutions that advance client objectives
- The Policy Group can harness the knowledge of lawyers across our 40+ offices and practice groups who work **closely with a number of public pension and welfare benefit plans and groups**
- We are located in Washington, DC and have offices in Los Angeles, Orange County, San Francisco, and Palo Alto

K&L Gates is Involved in All Stages of the Policy Lifecycle



SELECTED RECOGNITIONS

A number of publications, including *Chambers USA* and *Legal 500*, have ranked the group as one of the premier policy practices in the nation:

- In its 2017 edition, client commentary to *Chambers USA* included:
 - *"The K&L Gates team stands out for its knowledge, creativity, and dedication to understanding and advancing our goals," according to clients. "Their attorneys act as if they are part of our organization, not just advisers. They think about issues from our long-term business perspective, rather than strictly from their own legal perspective. Their substantive and geographic breadth enables them to support us in almost every respect, while remaining coordinated within a single firm."*
 - *"They consistently demonstrate hard work, perseverance, agility, strategic thinking, technical proficiency, transparency, strong collegial relations and very productive teamwork. As a client, we are being served extremely well and receive excellent value."*
- The group has earned recognition by *Legal 500* in both 2016 and 2017 with the publication stating: "clients can rely on a rapid, professional response across the public policy spectrum."

"The firm has one of the most robust lobby shops in the city."

The Washington Post



"... K&L Gates has established itself as a go-to firm for fixes on regulatory, tax and budget issues."

The Hill (2015)

Consistently recognized by the *National Law Journal* in the "Influence 50" survey as a top influential lobbying firm.



RECENT WORK & SUCCESSES



Maintaining Special Rules for Retirement Plans Not Subject to ERISA

- Successfully maintained important and unique retirement provisions for clergy and church workers as part of tax reform effort



Providing Investment Policy Advice to Large State Pension Plan

- Provide strategic counsel on financial services policy, particularly in the area of investor protection and shareholder rights for large institutional investors, to public pension plan



Promoting Employee Stock Ownership Plans

- Advocate on behalf of trade association to promote ESOPs



Protecting Availability of Low-Cost, High-Quality Investment Advice

- Advocate in favor of strong fiduciary rule, while enhancing profile of large independent investment adviser



Advocating on Behalf of Health Plans as Part of Health Care Reform

- Advocate on behalf of church pension plans and a state-regulated association health plan



K&L GATES



K&L GATES

Los Angeles County Employees Retirement Association (LACERA)

Response to the Request for Proposal for
Federal Legislative Advocacy Services
Concerning Health, Pension, and Plan
Administration Issues

Contact:

Karishma Shah Page

Partner

K&L Gates LLP

1601 K Street, NW

Washington, D.C. 20006

Phone: +1 202 778 9128

karishma.page@klgates.com

TABLE OF CONTENTS

	Page
1. Cover Letter	2
2. Executive Summary	5
3. Experience, Approach, and Success	6
4. Assigned Professionals.....	15
5. References	21
6. Fees and Costs, Billing Practices and Payment Terms.....	22
7. Conflicts of Interest	23
8. Claims	24
9. Insurance	25
10. Samples of Written Work	26
11. Other Information	27
Appendix	A

June 22, 2017

Karishma Shah Page
Partner
T +1 202 778 9128
karishma.page@klgates.com

VIA ELECTRONIC MAIL AND COURIER

LACERA
Attention: Barry Lew
Legislative Affairs Officer
300 North Lake Avenue, Suite 620
Pasadena, CA 91101

**Re: Response to the Request for Proposals for Federal Legislative Advocacy Services
Concerning Health, Pension, and Plan Administration Issues**

Dear Mr. Lew:

On behalf of K&L Gates, we are grateful for the opportunity to present LACERA with a proposal for federal legislative advocacy services concerning health, pension, and plan administration issues. We believe K&L Gates is uniquely positioned to assist LACERA and have prepared a response that highlights our strong qualifications and commitment to serving LACERA and its stakeholders.

We understand the challenges facing public pension and health care plans. In recent years, governmental plans have come under increasing scrutiny from local, state, and federal officials concerned with funding levels and rising health care costs, among other issues. This scrutiny has taken place against a backdrop of dramatic shifts in the policy and political landscape in Washington, D.C. caused by the election of President Trump and a Republican Congress. With the shift in the balance of power, governmental plans like LACERA face new challenges — and opportunities — as the new administration and Congress chart a course on health care, tax, and retirement reforms that will implicate a broad range of pension and health care benefit plans.

- **Health Reform.** Congressional Republicans and the administration are continuing to craft legislation that would fast-track the repeal of certain portions of the Affordable Care Act (ACA) and replace them with Republican-favored alternatives. Changes to the ACA's insurance market regulations and certain tax provisions have significant implications for governmental health plans. Plans are also concerned about the potential impact of new insurance market reforms on employer-based coverage and the impact of changes to prescription drug regulation and Medicare payment reform efforts on health care costs.
- **Tax Reform.** Congress and the administration remain focused on enacting tax reform legislation. Some of the approaches under consideration contain provisions that would uniquely or particularly impact governmental retirement plans. Proposals include narrowing or eliminating certain retirement savings incentives and consolidating or "harmonizing" different types of retirement plans that may ignore the unique nature of governmental plans. Certain plans could affect the tax-exempt status of corporate dividend and interest distribution or the deductibility of interest expense, directly affecting return on investment and the cost of capital. There are also several proposals that may have unintended or unforeseen consequences on retirement plans, such as tax reform of financial products and services.

- **Entitlement Reform.** As Congress considers President Trump's fiscal year 2018 budget request and legislation to increase the nation's borrowing authority and reform the tax code, there will be increased scrutiny on the size and growth rates of entitlement programs, including Medicare, Medicaid, and Social Security. The Republican effort to repeal and replace portions of the ACA has included a number of provisions to limit the growth rate of the Medicaid program. In addition, a number of conservatives are seeking to link tax reform to entitlement reform.
- **Financial Services Reform.** The House's enactment of the Financial Choice Act, a measure to rollback the Dodd-Frank Act, has set in motion wide-ranging financial services reform, with proposals impacting the DOL fiduciary duty rulemaking to shareholders proposals. The Treasury Department has released a report reinforcing many of the Financial Choice Act proposals, but also providing a path forward for a potential Senate package.
- **Regulatory Activity.** The administration is undertaking a broad regulatory reform agenda that implicates public pension and health care plans on a host of retirement, health care, and tax issues. A few important matters for LACERA include the Department of Labor and Securities and Exchange Commission (SEC) effort to address the retirement advice fiduciary standard, the Department of Health and Human Services' efforts to reform health care provider payments and manage prescription drug costs, and potential changes to Treasury Department regulations and guidance concerning the ACA's employer mandate and "Cadillac" tax, among others.
- **Oversight and Enforcement.** Market volatility over the past several years, coupled with a few significant instances of underfunded public pension plans, has focused policymakers' and regulators' attention on plan funding, operations, administration, and transparency issues, which could lead to expanded oversight, introduction (and even possible consideration) of legislation, and regulatory enforcement.

These developments present not only new challenges for LACERA, but also significant opportunities to influence the debate and protect the interests of LACERA and its beneficiaries.

K&L Gates has the 360-degree experience to assist LACERA with strategic federal advocacy services to advance its legislative and regulatory priorities. K&L Gates is a global law firm with fully integrated offices on five continents and over 2,000 lawyers and policy professionals. We have one of the largest federal public policy groups in Washington, D.C., which is comprised of more than 50 lawyers and government affairs professionals. We combine a history of effectively engaging key policymakers based on a collaborative, integrated approach to developing in-depth knowledge of every client's substantive legal and policy issues.

We are able to seamlessly draw upon the firm's deep and diverse subject matter experience in the area of pensions, health care, and related issues. With our significant experience in these areas, we are available to begin the engagement as trusted counselors on day one. Not only do we work extensively with non-ERISA plans, which allows us to understand the complex policy dynamics at play, our existing work with LACERA has provided us with an understanding of the organization. On the following pages, we demonstrate why we are uniquely suited to serve as LACERA's trusted federal policy advocate in Washington, D.C.

I affirm that I am authorized to bind K&L Gates to an engagement agreement with LACERA. The information stated in our proposal is accurate and may be relied upon by LACERA in considering, and potentially accepting, our proposal.

We look forward to the opportunity to work with LACERA to advance its federal policy objectives and are prepared to move forward expeditiously if awarded the honor of this representation. We are available at your convenience to discuss this proposal and next steps.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Shah', written over a faint circular stamp.

Karishma Shah Page
Partner, K&L Gates

2. Executive Summary

In this section, an overview should be provided of the respondent's background, experience, and other qualifications to serve as LACERA's legislative advocate with respect to Federal Issues.

As a global law firm with deep and diverse experience in the legal and policy issues affecting public pension and health care plans, K&L Gates is uniquely positioned to provide strategic federal advocacy services to LACERA. The K&L Gates Policy Group has successfully advocated on behalf of governmental plans, multi-employer public retirement systems, and public employees as part of nearly every significant legislative and regulatory issue impacting pension and health care issues over the past two decades. Our policy professionals have a deep, nuanced understanding of the substantive issues, the political process, the politics, and key decision-makers across the federal government. We combine that understanding with our experience in developing and advancing creative solutions for large, diverse organizations and leveraging our resources to provide exceptional service and assure the most effective advocacy.

We Understand the Issues, Process, Politics, and Key Decision-Makers

The K&L Gates Policy Group not only has extensive experience working with the key decision-makers in the Trump administration and Congress, but also the substantive, political, and procedural elements that are critical to effective advocacy. We combine our knowledge of Capitol Hill with years of experience working closely with a range of public sector pension and health care plans on issues related to the Internal Revenue Code, ERISA, Medicare, Medicaid, Social Security, and a number of other state and federal statutes and regulations. In addition to our long experience working with legislators and staffers, we work with senior White House officials and executive branch departments and agencies to influence a range of administrative activities spanning the rulemaking process to less formal executive action. We also maintain a network of strong, effective relationships with multi-party and multi-industry coalitions, as well as with think tanks and academics across the policy and ideological spectrum.

We Excel at Advancing Creative Solutions

Bringing together our knowledge of the substance, process, and players, we think strategically about potential solutions that advance client objectives and tactically about ways to advance those objectives. We harness the knowledge of our lawyers to offer a 360-degree perspective of the issues and the solutions.

We Understand the Dynamics of Diverse Organizations

We recognize that organizations face significant internal and external stakeholder pressures, all of which need to be balanced while developing and advancing a policy agenda. The current political environment has heightened these pressures significantly. K&L Gates can help in developing a strategic policy agenda and weighing all appropriate considerations to advance its objectives while being responsive to stakeholders. We also provide guidance on internal and external communications strategies.

We Employ the Best Resources to Keep Clients Informed

K&L Gates relies on a team of government affairs professionals to monitor the daily activities of the federal government affecting our clients. The "war room" in which they operate and share information is a technologically advanced intelligence-gathering machine that provides a cost-effective means of keeping clients apprised of legislative and regulatory developments. We also rely on our policy professionals' routine interactions with legislators, congressional staff, and regulators to gather and share intelligence of importance to our clients. Using our unparalleled capabilities, we receive, scrutinize, and distill the full spectrum of retirement and health care policy developments and provide insight from every direction for LACERA and its stakeholders.

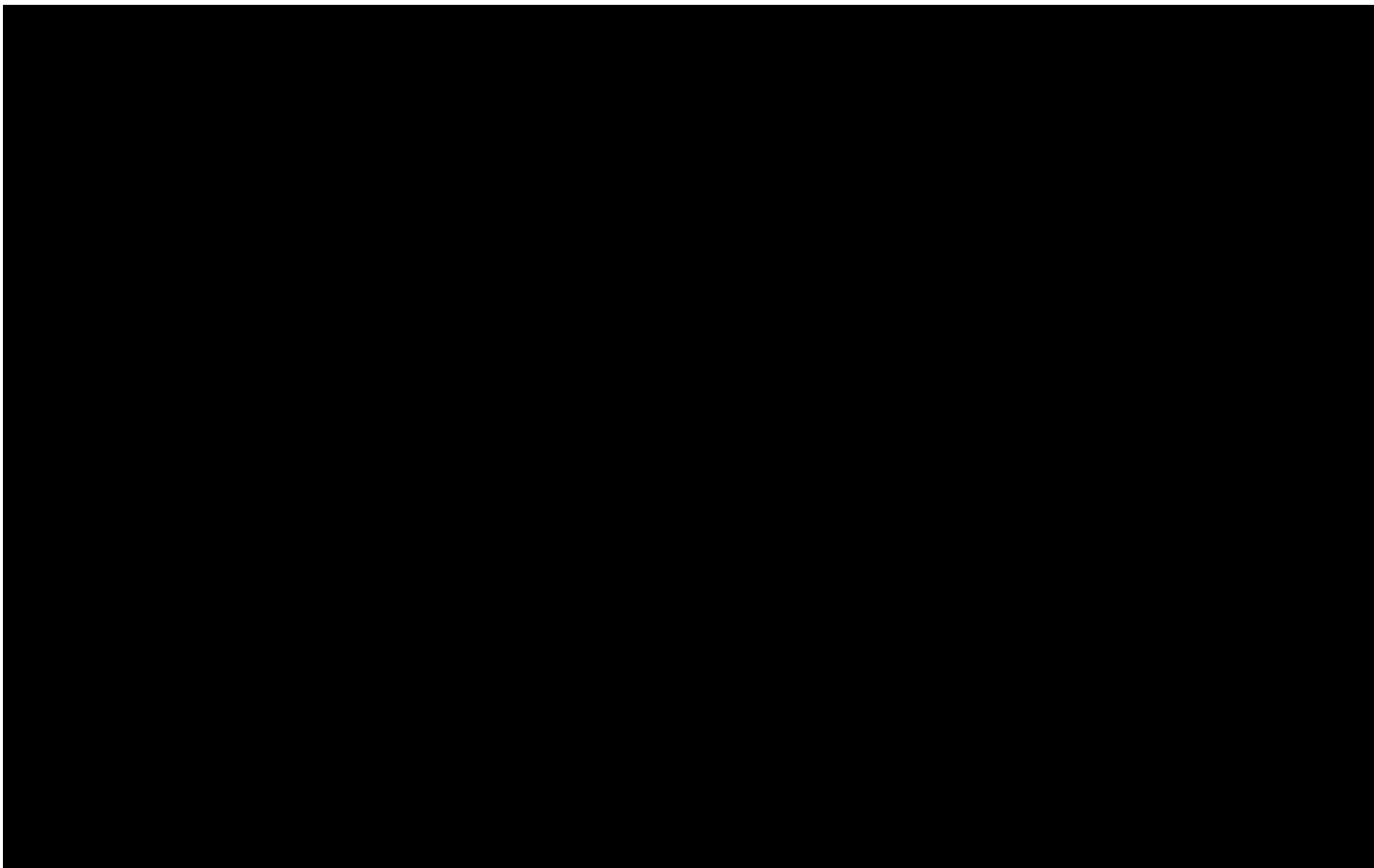
3. Experience, Approach, and Success

The proposal must provide a detailed statement of the respondent's experience and accomplishments in providing legislative advocacy services on Federal Issues, including, if subject to disclosure, information concerning such work performed for other public pension systems. LACERA's goal in the RFP process is obtain a comprehensive understanding of the respondent's experience, approach, and success in providing such services. LACERA is also interested in how the respondent differentiates themselves from other firms offering similar services.

OUR EXPERIENCE

The Policy Group is uniquely well positioned to assist LACERA on federal policy matters. The K&L Gates Policy Group has successfully advocated on behalf of governmental plans, multi-employer public retirement systems, and public employees on legislative and regulatory issues spanning pension and health care issues. The size and experience of our team allows us to work closely and nimbly with Congress on a bipartisan, bicameral basis and with the administration to provide exceptional service to LACERA across a broad spectrum of issue areas.

The proposed LACERA team has significant policy experience, extensive knowledge, and a vast network of relationships on retirement and health care issues that they bring to the LACERA relationship. As a result of our background and experience on retirement and health care issues, the proposed LACERA team has a deep, nuanced understanding of the Internal Revenue Code, ERISA, Medicare and Medicaid, Social Security, and other state and federal statutes and regulations impacting public pension and health care plans. Policy Group members, individually and collectively, have been involved in nearly every significant legislative and regulatory issue impacting pension and health care plans over the past two decades.



Experience and Substantive Knowledge of Capitol Hill

Representation of our clients blends the three elements of a successful advocacy group: substantive knowledge, detailed understanding of the political process, and the respect of key decision-makers in Congress and the administration.

We not only know the formal structure and processes of congressional authorizing, oversight, and appropriations committees, we regularly work on matters involving agency programs and regulatory activity. Our knowledge of Capitol Hill is supplemented by intangibles such as long experience in working with legislators and staffers.

We employ several methods to educate and inform policymakers on issues impacting our clients. On retirement, health care, and tax issues, we have worked closely with:

- The California Delegation;
- House and Senate Majority and Minority Leadership;
- Senate Finance Committee;
- House Ways and Means Committee;
- Senate Banking Committee;
- House Financial Services Committee;
- Senate Health, Education, Labor and Pensions Committee;
- House Education and the Workforce Committee;
- House Energy and Commerce Committee;
- Senate Special Aging Committee; and
- Joint Committee on Taxation.

Experience With Regulatory Agencies

The members of the proposed LACERA team work extensively with federal government departments and agencies that intersect with public pension and health care plans. These include the Internal Revenue Service, Department of Treasury, Department of Labor, Department of Health and Human Services, the Centers for Medicare and Medicaid Services, the Social Security Administration, SEC, CFTC, and the White House. In addition, we work closely with the Government Accounting Standards Board.

We regularly meet with relevant officials and staff of government departments and agencies to provide briefings and advance client issues. We have significant experience directly and indirectly influencing a range of executive actions, including drafting comment letters and facilitating meetings to discuss potential issues and solutions using a variety of administrative approaches. In addition, we closely monitor the activities of the federal government departments and agencies and maintain frequent contact with officials and staff to gather intelligence on issues of interest to each client.

Monitoring, Research, and Reporting

In addition to our substantive legislative and regulatory experience in areas of interest to LACERA, K&L Gates employs government affairs professionals, typically former junior congressional staff, who on a daily basis monitor activities (e.g., congressional hearings, introduced legislation, agency rulemakings, press clippings) affecting our clients. The “war room” in which they operate and share information is a technologically advanced intelligence-gathering machine, using social media, advanced legislative and administrative action tracking

tools, and thousands of publications, as well as the tried-and-true method of directly contacting congressional offices and committees and/or government agencies. We believe that our government affairs professionals provide a cost-effective means of helping clients stay on top of critical developments and help the team act in a timely manner on opportunities or developments potentially affecting LACERA's priorities.

With respect to information gathering, the members LACERA team will closely monitor and gather intelligence on legislative and regulatory activities impacting retirement and health care policy. As noted above, we maintain close contact with members of Congress, congressional staff, and officials of the relevant federal government departments and agencies, ensuring that we are aware of developments on the horizon while offering the opportunity to make inquiries on specific issues when needed. This includes congressional committees of jurisdiction over retirement and health care issues, Internal Revenue Service, Department of Treasury, Department of Labor, Department of Health and Human Services, the Centers for Medicare and Medicaid Services, and the Social Security Administration, among others.

An additional core component of our information gathering system is a team of Government Affairs Coordinators and Government Affairs Specialists who work with clients to provide comprehensive 24/7 monitoring of policy-related developments and events. This includes monitoring, coverage, and analysis of markups, hearings, briefings, government publications, and rulemakings/guidance. The team is also well-versed in congressional and administrative procedures and key factors in the decision-making process that allow them to advise on the status and future prospects of legislative and regulatory developments.

Using these extensive monitoring and research capabilities, we are able to scrutinize the full spectrum of retirement and health care policy issues from every direction — substantively and politically — and provide timely, relevant, digestible reports that describe the implications for public pension and health care plans and, more specifically, LACERA and its stakeholders.

Experience with Trade Associations, Other Stakeholders, and Think Tanks

K&L Gates' Policy Group is adept at working with diverse, multi-party, and multi-industry coalitions to determine common ground on key issues and accomplish client objectives. In addition to working with similarly situated stakeholders, K&L Gates also effectively works with "ideological compatriots," as well as think tanks and academics across the policy and political spectrum. Such relationships can range in formality from ad hoc, short-term projects to long-term coalition efforts. In addition to participating in existing coalitions, K&L Gates has successfully created coalitions to advance client issues.

The Policy Group maintains a network of strong, effective relationships with organizations that operate at the intersection of retirement and health care. Examples include:

- AARP
- AdvaMed
- American Bankers Association
- American Benefits Council
- American Council of Life Insurers
- American Enterprise Institute
- American Hospital Association
- American Institute of CPAs
- American Medical Association
- American Society of Pension Professional & Actuaries
- Bipartisan Policy Center
- California Association of Public Retirement Systems
- CATO
- Center for American Progress
- Congressional Black Caucus
- Council of Institutional Investors
- Council of State Governments
- Employee Benefit Research Institute
- ERISA Industry Committee
- Financial Accounting Foundation
- Financial Industry Regulatory Authority (FINRA)
- Financial Services Roundtable
- Financial Services Forum
- Governmental Accounting Standards Board
- Heritage Foundation

- Investment Company Institute
- Managed Funds Association
- National Association of Government Defined Contribution Administrators, Inc.
- National Association of Public Pension Plan Attorneys
- National Association of State Retirement Administrators
- National Conference of State Legislatures
- National Conference on Public Employee Retirement Systems
- National Governors Association
- National League of Cities
- Plan Sponsor Council of America
- Pharmaceutical Research and Manufacturers of America (PhRMA)
- Securities Industry and Financial Markets Association (SIFMA)
- Society for Human Resource Management
- State and County Retirement Systems of California
- Third Way
- U.S. Chamber of Commerce
- U.S. Conference of Mayors

OUR APPROACH

We understand that the objective of LACERA's federal policy engagement is to engage lawmakers on solutions that maintain and strengthen public pension and health care plans for the benefit of participants. In achieving that objective, some of LACERA's key retirement policy priorities include, among others: (1) supporting federal policies that encourage retirement savings; (2) ensuring retirement plan funding and accountability; (3) preserving the long-term health of Social Security; and (4) evaluating the impact of federal tax reform proposals on public defined benefit plans. In particular, LACERA is interested in efforts to repeal the Windfall Elimination Provision and Government Pension Offset for Social Security. Other issues of importance include fiduciary obligations of boards of directors and public pension plan operations, qualification, administration, and transparency.

In addition to retirement policy, LACERA's key health care policy priorities include, among others: (1) understanding the impact of, and working to minimize the disruption caused by, changes to the ACA; (2) advocating for relief from the ACA's "Cadillac" tax; (3) supporting federal policies and private sector efforts to limit health care cost growth; (4) controlling increasing prescription drug costs; (5) protecting the Medicare program for retirees; and (6) understanding further changes to the rules governing health information privacy and security.

K&L Gates' approach to federal policy representation on these and other issues of interest to LACERA includes work from the most basic levels — monitoring, intelligence-gathering, and analysis of developments and trends — to the most complex elements of strategy development and goal-setting, building relationships, and assessing avenues of likely success. K&L Gates will employ the following strategies to help LACERA achieve its objective:

- **Gather and Analyze Intelligence and Report on Key Issues.** We will monitor and analyze all federal policy developments related to retirement and health care, including in Congress, the administration, and among stakeholders on an ongoing basis for LACERA. In addition, we will continuously engage with key policymakers and stakeholders to gather information and develop insights on trends that will affect LACERA and its stakeholders. We will regularly communicate with LACERA staff with sufficient time for LACERA to take informed, timely action based on our assessment.
- **Track and Report on Legislative and Regulatory Developments.** K&L Gates will employ its team of analysts and specialists to closely track the progress of legislation and regulations of importance to LACERA. We will also provide copies of relevant documents, along with summaries, analysis, and notice of applicable deadlines. This information will be used to prepare reports for LACERA on a monthly or as-needed basis in accordance with format and timing requests.

- **Assist LACERA on Development of Priorities and a Strategic Engagement Plan.** We will collaborate with LACERA officials and staff to identify and develop current retirement and health care policy priorities. We will then identify emerging opportunities and threats, prioritize short-term and long-term federal policy objectives, and develop and implement a strategic engagement plan to achieve them. We recognize that organizations face significant internal and external stakeholder pressures, all of which need to be balanced while advancing a policy agenda. The current environment has heightened these pressures significantly. We are well positioned to help think strategically about how to weigh these considerations to advance policy goals while being responsive to stakeholders. We will assist LACERA in communicating these objectives and strategies to internal and external stakeholders.
- **Communicate With LACERA's Internal Stakeholders.** We will provide LACERA with reports on policy developments on a regular, timely basis and will continuously coordinate and update LACERA on the status of various projects and activities by maintaining regular contact with the Board, the Insurance, Benefits & Legislative Committee (IBLC), and staff. K&L Gates will attend in-person meetings with the Board and the IBLC to update them on strategy and other activities at least quarterly.
- **Develop Outreach Plan.** Once we have inventoried LACERA's existing relationships with policymakers, we will develop a phased outreach plan to expand on these relationships over time, beginning with leadership, philosophical and ideological allies, and California delegation members on the key committees. We will implement the plan by arranging lobby day meetings for LACERA's officials to educate policymakers about LACERA's retirement and health care policy priorities.
- **Direct Advocacy.** We will engage in direct legislative and regulatory advocacy on behalf of LACERA in accordance with Board-approved positions. In addition to meetings, calls, and written communications (e.g., letters, emails, etc.) to advance LACERA's interests, the members of the proposed client team will serve as a liaison to policymakers as needed. For example, we will represent LACERA at hearings/briefings and convey/respond to inquiries or requests for information.
- **Serve as LACERA's On-the-Ground Presence in D.C.** In conjunction with our direct advocacy and relationship building efforts, K&L Gates will execute on an approved strategy to further raise awareness of LACERA's issues and interests among legislators, the administration, and stakeholder organizations.
- **Assist With Messaging.** Effective advocacy requires distilling complex issues into easily understood messages and explanations. In engaging with policymakers, we will ensure that our messaging and communications on LACERA's positions are substantive, concise, persuasive to the target audience, and reflective of LACERA's style. We will assist LACERA to develop messaging and other materials, such as talking points, "one-pagers" (explaining the problem, background, and solution), position papers, and congressional testimony as necessary and appropriate.
- **Build Support for Projects.** As discussed above, we will work collaboratively with LACERA to develop priorities and projects. We will work to build congressional and administration support for these projects in accordance with the strategic plan. At this stage, we envision such a plan to include, among other tactics to be determined, direct advocacy by LACERA and K&L Gates, work with coalitions and cultivation of third-party advocates, and enhancing LACERA's profile among policymakers through testimony and similar opportunities.
- **Communicate With External Stakeholders.** K&L Gates will engage with stakeholder organizations that are supportive of and/or adverse to LACERA's position on federal policy matters to achieve the objectives outlined by the Board, IBLC, and LACERA's staff. K&L Gates maintains strong working relationships with many of these organizations in Washington, D.C. and across the country and is able to effectively coordinate outreach and engagement consistent with LACERA's policy priorities and strategy.

OUR SUCCESSES



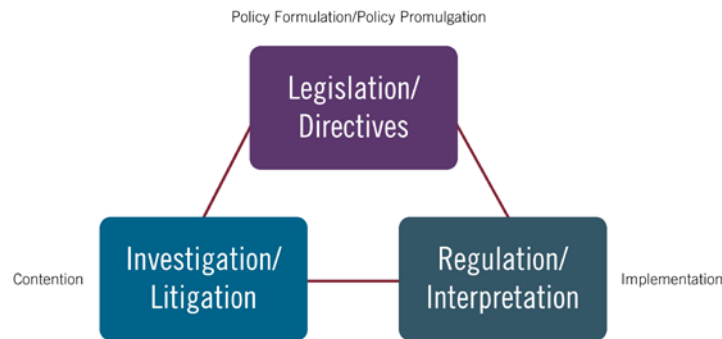
WHAT DIFFERENTIATES US FROM OTHER FIRMS?

The Washington, D.C. office is home to the K&L Gates Policy Group, a team that operates at the intersection of public policy, law, and business. Founded over four decades ago, at a time when few law firms had public policy practices, we have grown from a single public policy professional to become the largest policy group of any fully integrated global law firm.

The Policy Group comprises more than 50 bipartisan lawyers and nonlawyer professionals, including former members of Congress and senior congressional staff, a former U.S. Attorney General, a former Secretary of the U.S. Army, and other senior executive branch staff, who regularly provide counsel to senior executives and C-suite executives of public and private organizations of all sizes and across a range of industries. The Policy Group emphasizes a substantive and collaborative approach to public policy. We also invest significant efforts in monitoring actions by agencies and lawmakers and collecting intelligence that will facilitate timely, prepared advocacy.

Our goal is to understand our client’s policy issues from every direction — substantively and politically — and to use the collective knowledge and experience of our team to help our clients achieve their objectives and successfully maneuver through the policy life cycle: legislation, regulation, and dispute resolution. In doing so, our objective is to help clients realize results that correlate with positive “bottom line” goals.

K&L Gates is Involved in All Stages of the Policy Lifecycle



We are honored that a number of publications, including *Chambers USA* and *Legal 500*, have ranked the group as one of the premier policy practices in the nation.

- In their 2017 edition, client commentary to *Chambers USA* included:
 - “The K&L Gates team stands out for its knowledge, creativity, and dedication to understanding and advancing our goals,” according to clients. “Their attorneys act as if they are part of our organization, not just advisers. They think about issues from our long-term business perspective, rather than strictly from their own legal perspective. Their substantive and geographic breadth enables them to support us in almost every respect, while remaining coordinated within a single firm.”

- *"They consistently demonstrate hard work, perseverance, agility, strategic thinking, technical proficiency, transparency, strong collegial relations and very productive teamwork. As a client, we are being served extremely well and receive excellent value."*
- In their 2016 edition, *Chambers USA* said that the group "[d]raws on considerable expertise from its dedicated bipartisan team. Possesses a long history of service in the political sector and is recognized for the tremendous level of insight it provides," while, in 2015, they stated the group is, "[a]n established and experienced government relations practice, with noted global reach and strength in depth."
- The 2016 edition of *Legal 500* ranks the group in their top tier: "clients can rely on a rapid, professional response across the public policy spectrum."
- The group is also consistently ranked among the top law firms in the *National Law Journal's* Influence 50 survey, most recently in its October 2015 publication.

However, what we cherish the most is our record of successful collaborations with our clients and helping them to achieve their federal policy objectives. That, to us, is success.

Other Unique Attributes of the K&L Gates Policy Group

- As a law firm-based government affairs practice, we combine legal knowledge with policy experience. There are many government affairs groups in Washington, D.C. that are reputable and can ably deliver successes on behalf of their clients. What distinguishes us is our ability to combine the legal and political substance, the process, and the players to think strategically about potential solutions that advance client objectives and tactically about ways to advance those objectives.

Many policy issues have nuanced legal components, which can be quite complicated to unravel and difficult to fully comprehend. The Policy Group can harness the knowledge of lawyers across our more than 40 integrated offices and practice groups to offer our clients a full 360-degree perspective of the issues they face and the solutions that are available. Our lawyers work closely with a number of public sector pension and welfare benefit plans and regularly offer substantive legal perspectives on much of the Policy Group's advocacy engagements.

- We are located in Washington, D.C. and have offices in California. While our policy professionals are based in Washington, D.C., we have offices in Los Angeles, San Francisco, Orange County, and Palo Alto, and are a phone call, email, or video conference away. If, for some reason, an in-person meeting cannot be held, we are happy to host video conferences between LACERA officials and the K&L Gates team and could invite members from LACERA to the K&L Gates Los Angeles office to participate in these briefings.
- We have meaningful relationships with and insight into the Trump administration. Several members of the Policy Group began working closely with Donald Trump's campaign early in 2016. Our colleagues then forged ties with the Trump transition team when it was first established and now work closely with newly appointed personnel:
 - **Amy Carnevale**, a government affairs advisor with the firm, served in a formal state leadership role with the Trump campaign. Amy was a Trump delegate to the Republican National Convention, was a member of the Republican Platform Committee where she collaborated closely with senior Trump campaign staff, and she served as a Trump Elector.

- **Dennis Stephens**, a government affairs counselor, has been with K&L Gates for over 20 years. Dennis began as a nearly full-time volunteer with the transition team in early October 2016, where he was responsible for handling high-level personnel matters.
- In addition to the work of Amy and Dennis, **Stephen Martinko**, government affairs counselor with the firm, was named a Deputy Team Leader for Transportation with the Trump transition office.
- **Dan Crowley**, a partner at K&L Gates, also held a formal role with the Trump transition team, where he advised on financial services issues.

These four individuals comprise the core team at K&L Gates with close relationships to senior officials in the White House. Other members of the firm have longstanding working relationships with various Trump administration appointees across the federal government, and they are available to assist with advice, strategy, and engagement with these officials as necessary.

4. Assigned Professionals

The proposal must set forth the name of the project lead and all other professional staff expected to be assigned to LACERA work, including a detailed profile of each person's background and relevant individual experience and the ability of the professionals collectively to function together as a team and also to work effectively with the Board, the IBLC, and staff in performing the scope of services.

K&L Gates takes a team-oriented approach to servicing its clients.

- **Our team is bipartisan.** Our lawyers and government affairs professionals include former members of Congress and senior congressional staff, a former U.S. Attorney General, a former Secretary of the U.S. Army, and other senior executive branch staff. We work together, as a team, to advance our clients' interests.
- **Policy Group members regularly collaborate and share information to serve our clients and help them identify opportunities and avoid threats.** Members of the Policy Group share information constantly for the benefit of the firm's clients. In addition, sub-practice groups focused on particular policy areas, such as tax, financial services, and health care, meet weekly to share detailed policy information, strategize client issues, and coordinate coverage of important developments. Individual client teams meet regularly to assess progress on strategic objectives and update key officials within client organizations.
- **Our team approach to representations ensures that you will always have the support you need.** We would expect to draw on other professionals within our practice and throughout the firm, as necessary, to meet LACERA's advocacy needs, actively monitor and report on issues of concern, and to bring substantive knowledge and perspective to bear.

This approach provides significant benefits to LACERA by ensuring we are utilizing the most effective assets — those with key working relationships with decision-makers and with experience in and knowledge of the subject matter or processes — at the most appropriate time.

Our Proposed Team



As discussed above, we firmly believe in the value of a team approach to engagements. We also understand the value in establishing clear lines of communication. We approach our engagements by designating a team coordinator and primary point of contact for each client. Those individuals collaborate with the full team to ensure resources are deployed, as appropriate, to achieve our clients' objectives.

[Karishma Page](#), a partner in the Policy Group, would serve as the team coordinator and LACERA's primary point of contact.

Ms. Page concentrates her practice on federal legislative and regulatory policy, focusing on tax, financial services, retirement, health care, and employee benefits issues. She has extensive experience on a variety of tax legislation, the Dodd-Frank Wall Street Reform and Consumer Protection Act, retirement legislation, the ACA, and related rulemaking and regulatory activity. Ms. Page develops and implements a variety of advocacy strategies to advance client objectives, both from a congressional and an administrative perspective. In particular, she leads complex, multi-faceted policy campaigns incorporating lobbying, coalitions and third-party advocates, grassroots/grasstops strategies, and traditional and new media.

Additionally, Ms. Page has experience building, managing, and engaging with coalitions. She counsels clients with respect to the key legislative and regulatory developments that impact their operations. Ms. Page's clients include Fortune 500 companies, trade and member associations, and tax-exempt entities. Ms. Page also advises clients on the intersection between social responsibility initiatives and the policy debate.

Primary LACERA Team

Each of the below professionals would actively collaborate with Ms. Page to advance LACERA's interests. Each professional brings a unique perspective, ranging from legal and policy experience, to political strategy, to decades of hands-on experience.



[Mary Burke Baker](#) is a government affairs counselor at K&L Gates who focuses on domestic and international federal tax matters affecting businesses and individuals. Her practice covers tax policy, tax reform, tax administration, and regulatory and technical tax issues. Ms. Baker consults with and advises administration, congressional, Treasury and IRS staff on tax reform and international tax policy issues. She leads several issue coalitions. Prior to joining K&L Gates, Ms. Baker served for six years with the Senate Committee on Finance. Ms. Baker also served at the International Revenue Service for more than 25 years in a variety of technical and management positions.



[Daniel F. C. Crowley](#), a partner, represents financial services providers on a broad range of policy issues including accounting and financial reporting, broker-dealer and securities trading, commodities and futures, corporate governance, depository institutions, derivatives and securitization, hedge funds, insurance, investment management, mortgage banking and consumer finance, and retirement security and pensions. He leads the firm's global financial services policy practice and facilitates coordination among these practice areas on behalf of the firm's policy clients. Prior to joining the firm, for five years Mr. Crowley was chief government affairs officer at the Investment Company Institute, the national association of the mutual fund industry. Previously, Mr. Crowley was vice president and managing director, Office of Government Relations, at the Nasdaq Stock Market, Inc. (NASDAQ). He joined NASDAQ after managing government relations during the spin-off of NASDAQ from its former parent, the National Association of Securities Dealers, Inc. (NASD, n/k/a FINRA). Before joining NASD as vice president, Governmental Affairs, Mr. Crowley served for eight years in the U.S. House of Representatives in increasingly senior staff positions, including: general counsel, Office of Speaker Newt Gingrich; general counsel, Committee on House Oversight (Bill Thomas, Chairman); and minority counsel, Committee on House Administration (Bill Thomas, Ranking Member).

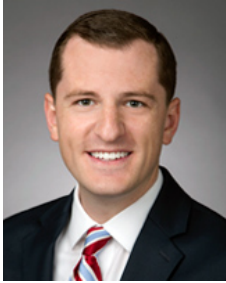


[William A. Kirk](#) is a partner who represents clients on tax, financial services, and corporate and transportation and infrastructure matters. Mr. Kirk's clients include public and private entities such as major corporations and national trade associations for whom he provides policy analysis and strategic advice and engages in advocacy with the Congress and executive branch agencies. He has significant experience representing emerging and middle-market firms on legal and policy matters (e.g., minority and women-owned companies) and investment firms, including venture capital funds and their management teams. Mr. Kirk also advises clients on diversity and inclusion issues. He serves on the steering committee of the Congressional Black Caucus Political Action Committee. Mr. Kirk is also a board member and counsel to the CBC Political Education and Leadership

Institute.



[Nicholas A. Leibham](#), a partner, principally advises clients that have a substantial interest in the federal government as a market place. This includes aspects of federal funding and business development initiatives, procurement, public-private partnerships, regulatory matters and rule makings, tax issues, and company wind-downs where the federal government is a creditor/stakeholder. Mr. Leibham also acts as outside general counsel to several start-up companies and trade associations where his work runs the gamut from boardroom governance and vendor agreements to human resources matters. Before joining the firm, Mr. Leibham was a prosecutor on behalf of the State of California. Mr. Leibham was also a Western Regional Director for the Democratic National Committee.



[Corbin T. Santo](#), an associate, counsels a broad range of health care clients, including hospitals and health systems, behavioral health providers, durable medical equipment suppliers, pharmaceutical and medical device companies, and large employers on legislative matters before the U.S. Congress and regulatory matters before various federal agencies. Prior to joining the firm, Mr. Santo represented health care clients on a range of regulatory issues, including Medicare reimbursement and alternative payment models, and various transactions, including joint ventures and development and operation of accountable care organizations and clinically integrated networks. Mr. Santo has prior strategic consulting experience relating to health care delivery system reform, alternative payment models, and consumer-oriented health care. He served as a legislative intern to former Indiana Senator Evan Bayh. Mr. Santo is a member of the American Health Lawyers Association and the LGBT Bar Association of the District of Columbia.



[Peter V. Nelson](#), an associate, advises clients at the leading edge of innovation about the impact of public policy on emerging technologies and business models. His experience covers a variety of policy areas, including federal taxation, communications, energy, and sustainability, among others. Peter has a particular depth of experience in the transportation and infrastructure space, where he has represented clients before the U.S. Department of Transportation, National Highway Traffic Safety Administration, and Federal Aviation Administration on a variety of legal, regulatory, and enforcement matters. As part of this work, he has counseled national trade associations and leading technology companies about the evolving policy environments for autonomous vehicles and unmanned aircraft systems. He has also assisted clients on a variety of issues related to public-private partnerships and other innovative tools to facilitate private investment in infrastructure.



Eric Love, an associate, focuses on federal legislative and regulatory policy issues related to financial services and capital markets, with an emphasis on corporate governance, accounting and financial reporting, and consumer finance. He has experience with rulemaking and regulatory activity arising under the Dodd-Frank Wall Street Reform and Consumer Protection Act, particularly by the SEC, Commodity Futures Trading Commission, and Consumer Financial Protection Bureau. Prior to joining the firm, Mr. Love served as a special assistant in the Office of Legislative Affairs at the U.S. Department of the Treasury. In this capacity, he focused on a broad range of international economic issues, including international financial services regulation, development, banking and securities, trade and investment, climate finance and monetary affairs. Immediately before joining Treasury, Mr. Love served for six years in a number of positions of increasing responsibility in the office of Congressman Melvin L. Watt of North Carolina, including as the senior legislative staff member responsible for advising the Congressman on all issues within the jurisdiction of the House Financial Services Committee.

Additional LACERA Team Members

Other members of the K&L Gates Policy Group, highlighted below, will provide substantive knowledge and political/policy support to LACERA as needed. We have featured a few selected professionals below:



[Former Senator Slade Gorton](#), of counsel, served 18 years in the U.S. Senate. During this time, he served as chairman of the Commerce Subcommittees on Consumer Affairs and Aviation, served on the Appropriations and Budget Committees, and was a member of the Republican leadership as counsel to the majority leader. In 2002, Senator Gorton was appointed to the “National Commission on Terrorist Attacks Upon the United States” (also known as the 9-11 Commission), an independent, bipartisan commission created by congressional legislation and the signature of President George W. Bush. The 9-11 Commission was chartered to prepare a full and complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks.



[Former Congressman Jim Walsh](#), a government affairs counselor, who served in the U.S. House of Representatives for 20 years. During his tenure in Congress, Mr. Walsh served as a deputy Republican whip. He was appointed as a member of the House Appropriations Committee. During that time he became Chairman of four House Appropriations Subcommittees: District of Columbia; Legislative Branch; VA, HUD and Independent Agencies (NASA, EPA, FEMA, NSF, Selective Service); and Military Quality of Life (included jurisdiction for Military Base Construction, the Defense Health Program, and Housing Accounts) and Veterans Affairs. He also served as ranking Republican member of the Labor, Health and Human Services Subcommittee on Appropriations.



[Former Congressman Bart Gordon](#), a partner, spent 26 years representing the state of Tennessee in the U.S. House of Representatives. During his time in Congress, he developed a reputation as the undisputed bipartisan leader in innovation policy. During his chairmanship of the House Committee on Science and Technology, the committee passed 151 bills and resolutions and all were bipartisan. In 2007, he championed the America COMPETES Act, signed into law by President Bush, which promotes federal investments in innovation in order to make the United States more competitive. In 2010, as Chairman of the Science and Technology Committee, he engineered the passage of the America COMPETES Reauthorization Act. Signed by President Obama, the act renewed the federal commitment to research and development and education, adding new provisions such as support for prize competitions. Prior to serving in Congress, he was the executive director of the Tennessee Democratic Party in 1979 and state party chairman from 1981 to 1983.



[Emanuel L. Rouvelas](#), a partner, has focused on the intersection of business, law, and policy for 44 years. He is a recognized authority in Maritime law and for four decades has traveled globally to advise the CEOs of many of the world’s leading shipping companies. His practice has taken him to more than 30 countries, and he often works with the executive branch, Congress, and foreign embassies and governments on international trade and transport matters. He founded the Washington, D.C. office of Preston Gates and guided its growth to more than 140 partners and employees at the time it was merged into K&L Gates on January 1, 2007. During his distinguished career, his accomplishments have consistently been recognized. During his career, Mr. Rouvelas has served as an advisor to two U.S. presidential transitions, a bipartisan congressional caucus, executive branch reorganization, Senators, Congressmen, and many political campaigns. Prior to joining K&L Gates, he was counsel to the U.S. Senate Committee on Commerce and chief counsel to its Merchant Marine and Foreign Commerce Subcommittees.



[Stacy J. Ettinger](#), a partner, has over 20 years of experience working in Congress and the executive branch. Her experience spans a variety of fields, including international trade, intellectual property, and regulatory issues, as well as food and product standards, motor vehicle safety, and consumer financial services. Prior to joining K&L Gates, Ms. Ettinger served as a senior legal and policy advisor to Senator Charles Schumer, including as Chief Counsel of the U.S. Senate Committee on Rules and Administration, and as Deputy Staff Director of the Joint Economic Committee. Prior to joining the Senator's legislative team, she served as a senior legal advisor at the U.S. Department of Commerce. Ms. Ettinger advised agency officials on the interpretation and application of U.S. and foreign trade rules, supervised dispute settlement proceedings before the World Trade Organization, and represented the United States in international trade negotiations.



[Amy Carnevale](#) is a government affairs advisor whose practice focuses on health care policy, labor and employment issues, and economic development. She is an elected member of the Massachusetts Republican State Committee and serves on the State Party's Executive Committee. She was an elected Trump delegate to the 2016 Republican Convention and served on the Platform Committee. Ms. Carnevale was also selected one of 11 electors for Donald Trump for the Commonwealth of Massachusetts.



[Dennis Stephens](#), a government affairs counselor, has more than 37 years working in Republican campaigns, policy, and political matters, including more than 21 years experience as a Republican lobbyist. Dennis works on a wide range of public policy issues including tax, technology, foreign policy, and transportation on behalf of Fortune 500 companies, associations, and small businesses. He has especially close relationships with the House Republican leadership and senior staff as well as many of the incoming freshmen. Dennis began as a nearly full-time volunteer on the Trump Transition Office in early October 2016 where he was responsible for handling high-level personnel matters.



[Dennis Potter](#), a government affairs advisor, focuses on federal policy. He represents clients on a wide range of issues before both houses of Congress as well as the executive branch. He assists the firm's clients and professionals with the development of legislative strategies and proposals and counsels clients on matters before Congress. Prior to joining the firm, Mr. Potter worked on the staff of Senator Phil Gramm (R-TX) where he focused on health care and Social Security policy.



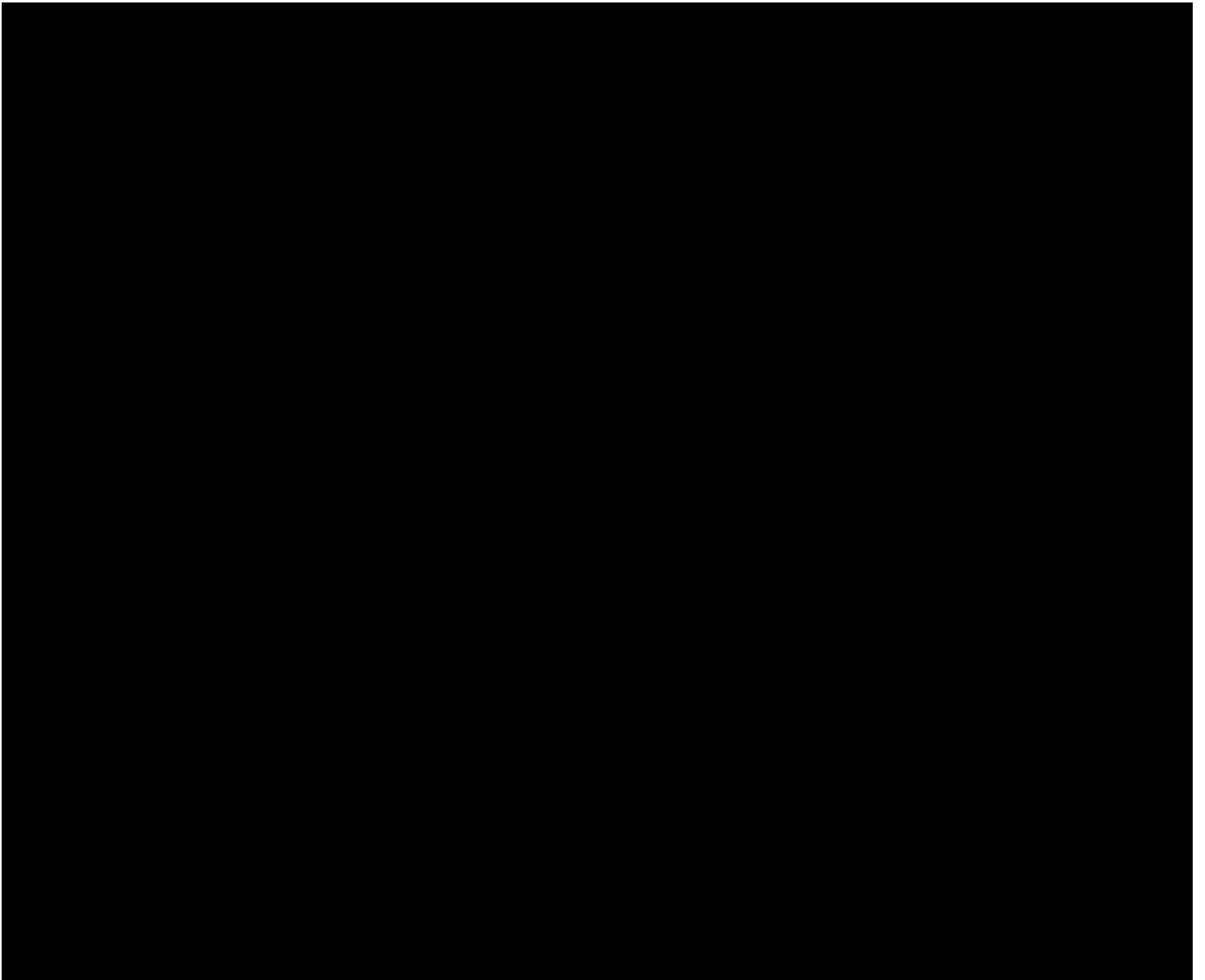
[Ryann D. Roberts](#), a government affairs analyst, previously served as a health business analyst for ASRC Federal. In this role, she supported the Center for Medicare and Medicaid Innovation and the Center for Clinical Standards and Quality within the Department of Health and Human Services in their efforts to execute relevant legislation and federal directives. She has particular knowledge in Medicare payment policy, federal health care quality initiatives, and analysis of state and federal health care policy.



Lauren M. Flynn, a government affairs specialist, works with a variety of clients to develop and implement policy strategies, coordinate complex outreach campaigns, and keep them informed regarding developments on issues of importance to them. Additionally, she assists with managing a variety of stakeholder coalitions. Prior to joining K&L Gates, Ms. Flynn worked for a senior member of the U.S. House of Representatives as a Legislative Assistant and Legislative Correspondent. During that time, she advised the Congressman on a number of issue areas, including defense, veterans affairs, homeland security, education, foreign policy, arts and humanities, housing, postal, and transportation. She also worked on a variety of appropriations and authorization-related issues.

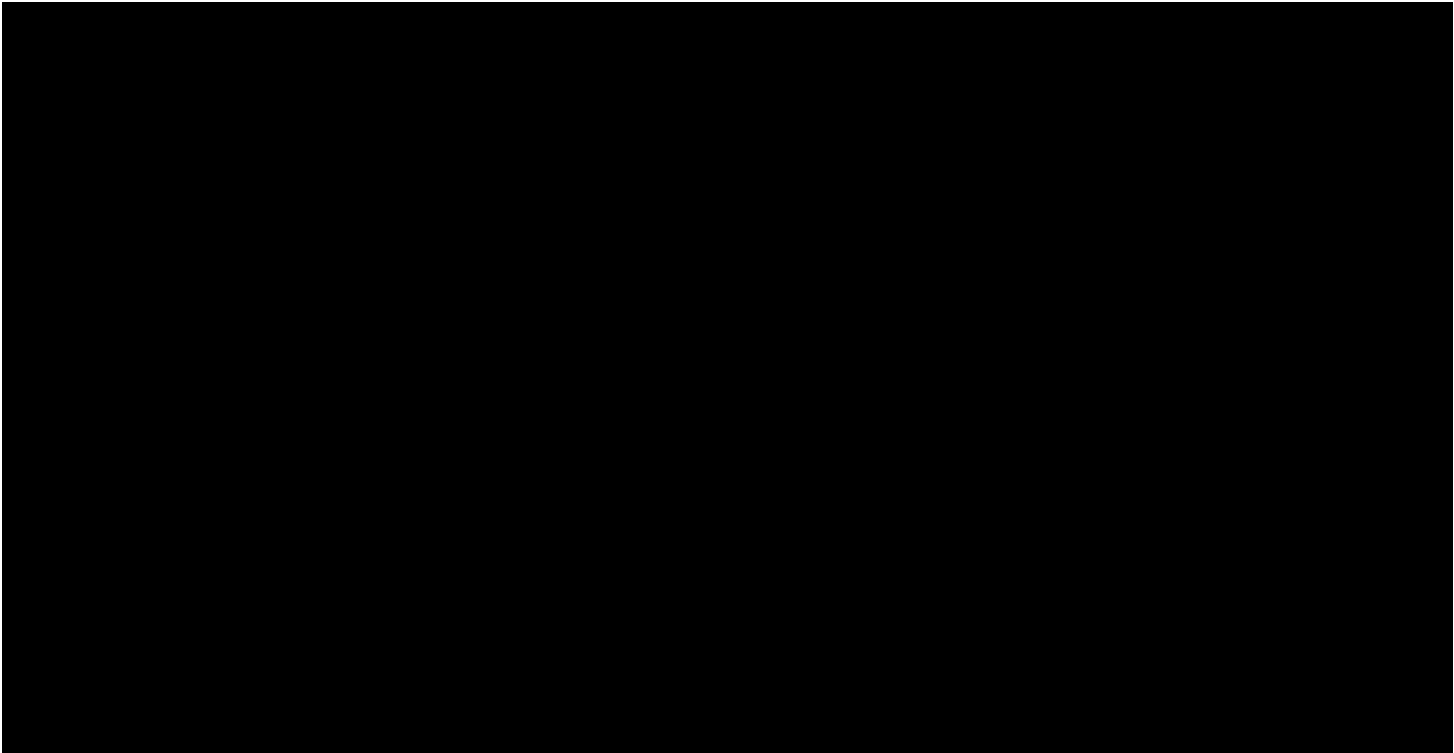
5. References

In this section, the proposal must identify as references at least three (3) public pension systems, public entities, or other reference for which the respondent has provided federal legislative advocacy services on Federal Issues, including, for each reference, an individual point of contact, the length of time the respondent served as legislative advocate, and a summary of the work performed.



6. Fees and Costs, Billing Practices, and Payment Terms

The respondent must explain the pricing proposal for the scope of work including pricing of fees and costs, billing practices, and payment terms that would apply assuming a five (5) year initial duration of the engagement as well as any additional period during which the engagement may extend. LACERA does not place any limits on the approach to pricing and is open to presentation of more than one pricing alternative for the scope of work, or portions of it. For example, the respondent might propose a monthly fixed fee, with special projects to be performed on an hourly rate basis. This section of the response should include an explanation as to how the pricing approach(es) will be managed to provide the best value to LACERA. The respondent should represent that the pricing offered to LACERA is, and will remain, equivalent to or better than that provided to other governmental clients, or should provide an explanation as to why this representation cannot be provided. All pricing proposals should be “best and final,” although LACERA reserves the right to negotiate on pricing.



7. Conflicts of Interest

The proposal must identify all actual or potential conflicts of interest that the respondent may face in the representation of LACERA. Specifically, and without limitation to other actual or potential conflicts, the proposal should identify any representation of the County of Los Angeles, Los Angeles Superior Court, Los Angeles County Office of Education, the South Coast Air Quality Management District, Little Lake Cemetery District, and Local Agency Formation Commission, and, to the respondent's knowledge, any of LACERA's members, vendors, other contracting parties, investments, and employees. The proposal should also identify any positional conflicts of which the respondent is aware.

K&L Gates has not identified any conflict, inclusive of the entities and individuals listed above, that would preclude our representation of LACERA with respect to the proposed engagement. We note that LACERA is a current client of the firm. Should any such conflict develop in the future, we would address that situation in light of applicable professional rules of conduct and in consultation with you.

By way of background, K&L Gates has in place detailed procedures for identifying and addressing actual or potential conflicts of interest. The firm maintains an extensive database identifying the firm's current and former clients, the nature of our engagements for such clients and the adverse parties and other interested parties involved in such matters. This database is continually updated with every new engagement undertaken by K&L Gates. No new client, or new matter for an existing client, is to be accepted by the firm until the computer search for potential conflicts is completed, all results reviewed, and any identified conflicts are addressed to the satisfaction of the firm's Office of the General Counsel.

If a conflict situation associated with a proposed new matter cannot be appropriately resolved in accordance with applicable ethical rules, it is the firm's policy and practice to decline to undertake the new matter. "New Matter" reports are circulated by email to all of the firm's lawyers in all offices on a daily basis to provide an additional opportunity to identify potential conflicts.

8. Claims

The proposal must identify all past, pending, or threatened litigation, and all administrative, ethics, and disciplinary investigation or other proceedings and claims against the firm and any of the professionals proposed to provide services to LACERA, whether while such professionals were employed by the firm or employed elsewhere.

As a global law firm with lawyers practicing out of offices in the United States, Europe, Asia, Australia, and the Middle East, the firm and its lawyers have from time to time been involved in legal or court proceedings relating to provision of legal services. We are not aware of any such legal or court proceedings that could or would affect our ability to perform the services identified in this RFP or any related services.

9. Insurance

The proposal must explain the insurance that the respondent will provide with respect to the services to be provided and other acts or omission of the firm and its staff in performing legislative advocacy services for LACERA.

K&L Gates has purchased primary professional liability insurance from the Attorneys' Liability Assurance Society, Inc. (ALAS), which is the largest insurer of lawyers in the United States, on a claims made basis. The insurance has been in force since the formation of ALAS over 25 years ago. Additionally, the firm has purchased significant professional liability insurance in excess of ALAS from commercial insurers, providing a single claim limit of \$500 million and \$1 billion in the aggregate. If we are selected, and if you require, we can provide appropriate certificates of insurance to evidence the level of professional liability insurance that we maintain.

10. Samples of Written Work

The proposal may contain samples of the respondent's written work relating to legislative advocacy on Federal Issues.

Please refer to Appendix A.

11. Other Information

The proposal may contain any other information that the respondent deems relevant to LACERA's selection process.

The K&L Gates Policy Group Meet and Greet and Distinguished Speaker Series

K&L Gates has welcomed many prominent government officials through its doors. For almost 20 years, our popular "Meet and Greet" and "Distinguished Speaker Series" programs have allowed firm clients, contacts, and lawyers to meet and mingle with elected officials and members of their staff and engage in dialogues on issues that directly affect them. Guests have heard first-hand from policymakers their thoughts on timely topics including immigration, tax policy, the mortgage crisis, health care, trade, energy, environmental, and intelligence. These events are complimentary to attend, are "off the record," and are not fundraisers. Since 2007, the Public Policy and Law group has hosted over 150 U.S. Representatives; 15 U.S. Senators; the Governor of Washington State; as well as prominent professional congressional staff and senior officials with executive agencies. Featured guests serve on important congressional committees, including: Energy and Commerce, Finance, Appropriations, Budget, Financial Services, Foreign Relations, Homeland Security, Judiciary, Oversight and Government Reform, and Ways and Means.

K&L Gates' Commitment to Diversity and Inclusion

In addition to our strengths highlighted on the previous pages, K&L Gates maintains a strong commitment to diversity and inclusion-related initiatives across our global platform.

K&L Gates' diverse lawyers hold key positions within the firm, such as leadership roles on the firm's Management Committee, as Practice Area Leaders, and as Regional and Office Managing Partners. We also have a Firmwide Diversity Committee and a Firmwide Women in the Profession Committee, both of which work to ensure that inclusion is always top of mind, that we execute a lawyer development program that improves integration and retention, and that we engage with clients and our communities along common priorities. Our Washington, D.C. office is heavily invested in our diversity and inclusion efforts, as evidenced by the variety of programming and sponsorships offered.

We encourage you to review our [2016 Diversity Report](#) for more information or to contact [Valerie Jackson](#), Senior Advisor to the Management Committee and Firmwide Director of Diversity and Inclusion, for more information.

For more information, please contact the lawyers included in this proposal, or visit www.klgates.com.

K&L GATES

Anchorage Austin Beijing Berlin Boston Brisbane Brussels Charleston Charlotte Chicago Dallas Doha Dubai
Fort Worth Frankfurt Harrisburg Hong Kong Houston London Los Angeles Melbourne Miami Milan Munich Newark New York
Orange County Palo Alto Paris Perth Pittsburgh Portland Raleigh Research Triangle Park San Francisco São Paulo Seattle
Seoul Shanghai Singapore Sydney Taipei Tokyo Warsaw Washington, D.C. Wilmington

K&L Gates comprises approximately 2,000 lawyers globally who practice in fully integrated offices located on five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

© 2017 K&L Gates LLP. All Rights Reserved.

ATTACHMENT C
Williams & Jensen



Williams & Jensen, PLLC

Proposal for Representation
of the
Los Angeles County Employees
Retirement Association

June 21, 2017

Table of Contents

Cover Letter	Page 3
Response to Request for Proposal	Page 4
Executive Summary	Page 4
Experience, Approach, Success	Page 5
Assigned Professionals	Page 7
References	Page 8
Fees, Costs, Billing Practices, and Payments	Page 9
Conflicts of Interest	Page 9
Claims	Page 10
Insurance	Page 10
Explanations of Samples of Written Work	Page 10
Other Information	Page 10
Biographies	Page 11
NAPPA Report April 2017	Page 15
NAPPA Report April 2016	Page 18
NCPERS Monitor September 2016	Page 22

WILLIAMS & JENSEN, PLLC

ATTORNEYS AT LAW

701 8TH STREET, NW
SUITE 500
WASHINGTON, DC 20001

OFFICE (202) 659-8201
FAX (202) 659-5249

June 21, 2017

Steven P. Rice
Chief Counsel
Los Angeles County Employees Retirement Association
300 N. Lake Ave., Suite 620
Pasadena, CA 91101

Dear Mr. Rice:

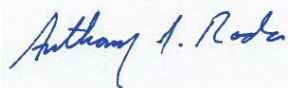
Thank you for the opportunity to submit a proposal to the Los Angeles County Employees Retirement Association (LACERA). Given my longstanding experience and day-to-day involvement at the federal level on issues affecting state and local governmental pension plans, I believe that I could provide significant assistance to your efforts in Washington, D.C.

This proposal is on behalf of the Washington, D.C. law firm, Williams & Jensen, PLLC, of which I am a principal and authorized to enter into contracts on behalf of the firm. I would be the lead counsel for LACERA under the contract. Further, I warrant that the information stated in the proposal is accurate and may be relied upon by LACERA in its consideration of the proposal.

Following this cover letter is a response to LACERA's Request for Proposal (RFP) dated May 22 regarding federal legislative advocacy services. At the end of the response, I have included biographies of the attorneys at Williams & Jensen, PLLC who would comprise LACERA's core team as well as some of my writings on relevant issues.

Thank you in advance for your consideration.

Sincerely,



Anthony J. Roda
Principal

Williams & Jensen, PLLC
701 8th St., NW, Suite 500
Washington, D.C. 20001
(202) 659-8201
ajroda@wms-jen.com

**Response to Request for Proposal
Los Angeles County Employees Retirement Association
June 21, 2017**

Executive Summary

Williams & Jensen, PLLC (hereafter “W&J”) is a Professional Limited Liability Company organized under the laws of the District of Columbia. It was founded in 1970 and currently has over 20 principals and a strong team of associates and government affairs specialists. W&J has been providing legislative and regulatory advocacy services since its founding.

Our office is located in Washington, D.C., which, of course, is convenient for in-person meetings with Members of Congress and staff, officials of the Department of the Treasury, Internal Revenue Service (IRS) and other federal government departments and agencies. W&J has lawyers and professionals specializing in over 25 major areas of public policy. The firm has been consistently rated one of the top 10 Washington lobby firms. We have worked on legislation before all major Congressional committees. We maintain working relationships with House and Senate committee chairmen and ranking members, and with the Democratic and Republican Leadership of both chambers. Our professionals, many of whom worked on Capitol Hill, know the key decision-makers, understand their political histories and current positions, and are adept at navigating shifting alliances and priorities to benefit client positions.

W&J has both the technical competence and the relationships needed for development and implementation of a successful legislative and regulatory plan for LACERA. Projects are managed by a lead point of contact and staffed by teams of professionals. We do not work from boilerplate strategy plans. Instead, we tailor the strategic and tactical approach to the client’s particular situation and how it fits into the overall political and legislative landscape.

We have been providing advocacy services to tax-exempt organizations for the past 20 years, including for the past 15 years for state and local governmental pension plans. In the state and local governmental pension plan area, W&J’s principal Tony Roda, who will be the project lead for LACERA, currently represents the:

- California Public Employees’ Retirement System
- Houston Firefighters’ Relief and Retirement Fund
- National Conference on Public Employee Retirement Systems
- Ohio Police & Fire Pension Fund
- Tennessee Consolidated Retirement System

For each of these clients, Tony handles issues related to federal legislative and regulatory matters related to their retirement plans. In addition, Tony has written numerous articles on matters related to public pension plans and is a frequent speaker at national conferences, including those held by the National Conference on Public Employee Retirement Systems (NCPERS), the National Association of Public Pension Attorneys (NAPPA), the National Association of State Retirement Administrators (NASRA), the National Council on Teacher Retirement (NCTR), the National Conference of State Social Security Administrators (NCSSSA), the International Foundation of Employee Benefit Plans (IFEBP) and the NRTA:

AARP's Educator Community. He has also appeared on live, on-camera webinars hosted by NCPERS. At these national conferences and webinars, Tony presents the federal legislative and regulatory updates and analysis on issues affecting public pension plans.

Given this deep experience on issues related to state and local governmental pension plans, W&J is well-positioned to represent LACERA. There would be no learning curve. We would be ready to start on day one, which I believe differentiates our firm from others.

Experience, Approach, and Success

W&J is the primary liaison with Members of Congress and their staff for all of our public pension clients. In general, W&J schedules and participates in Washington, D.C. fly-ins for public pension plan staff and trustees to meet with Members of Congress and their staff as well as Executive Branch officials. We utilize face-to-face meetings, emails, and text messages, depending on the information being communicated. W&J principals are on Capitol Hill every day that the House or Senate is in session.

With regard to LACERA's specific interest in the California Congressional Delegation, Tony Roda has already established relationships in the Delegation through his work on behalf of CalPERS, including the California members of the House Ways and Means Committee – Reps. Devin Nunes, Mike Thompson, Linda Sanchez and Judy Chu.

Federal Legislation

Tony, who will be the project lead for LACERA, has represented state and local governmental pension plans since 2002. On the federal legislative front, he has worked extensively on legislative proposals affecting public plans, including, but not limited to, the following:

- Waiver of early withdrawal penalty – This amendment to the Internal Revenue Code (IRC) was adopted as part of the Pension Protection Act of 2006 (PPA). It is an exception to the early age withdrawal penalty for public safety employees who reach age 50. Tony spearheaded this lobbying effort from 2002-2006 on behalf of the Houston Firefighters' Relief and Retirement Fund. The sponsor of the amendment was Rep. Kevin Brady (R-TX), who is now Chairman of the House Ways and Means Committee, which has jurisdiction over tax and health care legislation. *IRC section 72(t)(10)*
- Exclusion from taxable income for first \$3,000 of retirement distribution used for health care premiums (for public safety officers) – This amendment to the IRC was also enacted as part of the PPA. Tony worked on the initial legislative amendment and subsequent legislation and regulatory guidance to clarify the intent of the statute. *IRC section 402(l)*
- Public Employee Pension Transparency Act (PEPTA) – This legislation has been pending in Congress since 2010. Tony has worked against the legislation on behalf of his public pension clients since that time. The legislation would mandate that state and local plans report their funded status to the federal Treasury Department each year and on a recalculated basis using a U.S. Treasury bond curve. *H.R. 4822/S. 2381 (114th Congress)*
- Annuity accumulation retirement plan – Proposed by Senate Finance Committee Chairman Orrin Hatch (R-UT), this new optional qualified plan would allow state and local governmental plan

sponsors to purchase fixed rate, single-year annuities for their employees. Most believe that any plan sponsor which chose to create this new plan would freeze its existing defined benefit plan. Tony has worked against this proposal since it was first raised in 2013. *S. 2381 (114th Congress)*

- Pension normal cost – Tony worked successfully in 2015 to prevent a House-passed amendment from being included in the final conference report on the Every Child Succeeds Act. The amendment would have limited the use of federal higher education dollars to states to only normal pension costs. It defined normal pension costs to not include any unfunded accrued liabilities. The amendment would have imposed a serious burden on states and localities and would have been a negative precedent for other streams of federal monies to states.
- Employer pick up – Since the issuance of Revenue Ruling 2006-43, plan sponsors can no longer offer an election to legacy plan participants to choose between pension plans or plan tiers if they have different employee contribution rates. Legislation has been introduced in three of the last four Congresses (H.R. 2781, 115th Congress) to restore this flexibility for plan sponsors. The current bill has been introduced by Rep. Diane Black (R-TN). Previous legislation was introduced on behalf of Orange County, California, by former Rep. Loretta Sanchez (D-CA). In addition to the election issue, repeal of the pick up would raise approximately \$5 billion over 10 years, according to Congress’s Joint Committee on Taxation. Tony has been involved in both of these issues and recently drafted a comment letter to Treasury-IRS on the election issue. *IRC Section 414(h)(2)*
- Comprehensive tax reform – Several issues are being discussed in conjunction with tax reform legislation that would have implications for state and local plans, including: (1) Requirement that all future contributions to defined contribution plans (i.e., IRAs, 401(k), 457(b) and 403(b) plans) be made under Roth rules; this would eliminate pre-tax contributions and would expose the pick up as an anomaly in the tax code; (2) Potential changes to annual contribution limits and proposals to make those limits uniform as they apply to public plans; and (3) Subject distributions from 457(b) plans to the early withdrawal tax penalty under IRC section 72(t).
- Mandatory Social Security – Proposals sometimes arise that would require all newly-hired state and local workers to participate in Social Security. W&J’s public pension clients uniformly oppose this legislation.
- Windfall Elimination Provision (WEP) and Government Pension Offset (GPO) – W&J has been involved in efforts to fully repeal both offsets and, more recently, to replace WEP with a new proportional-based formula. *H.R. 711 (114th Congress)*.
- Revisions to the Affordable Care Act (ACA) – W&J is deeply involved in monitoring legislation to revise (“repeal and replace”) the ACA, including tax-related provisions, such as the Cadillac tax. Tony attends the annual conferences of the Public Sector HealthCare Roundtable and receives all publications from the group. The Roundtable’s Administrator, Tom Lussier, partners with W&J on the representation of CalPERS. Tony and Tom have a close working relationship.
- Medicare early age opt-in – Tony has been involved in efforts to allow pre-1986 hires to opt-into Medicare’s FICA payroll taxes as well as a proposal to create an early opt-in for retired public safety officers who reach age 55.

Federal Regulations

On the regulatory legislative front, Tony works closely with officials at the Department of Treasury and the IRS on matters affecting state and local pension plans. He represents his public pension clients in meetings with these agencies and has been involved recently in the following issues:

- Normal retirement age – Treasury-IRS issued final regulations on normal retirement age in 2007 and made compliance with the regulations necessary for plan qualification under the tax code. Since that time, Tony has participated in numerous meetings with Treasury-IRS officials to explain the impact of the regulations on governmental plans and the need for recognition of the uniqueness of those plans. Treasury Notice 2012-29 made major strides in our direction and proposed regulations released in early 2016 followed suit. We are currently awaiting final regulations on this matter. One of the writing samples attached to this submission is an in-depth review of this regulatory issue.
- Definition of governmental plan – In 2011, Treasury-IRS released an advanced notice of proposed rulemaking (ANPRM) to define governmental plan under IRC section 414(d). Concerns were raised about the ANPRM's facts-and-circumstances test and the lack of certainty that it would create for state and local plans. We are currently awaiting the release of proposed regulations.
- Employer pick up – As explained above in the section on legislation, the pick up is also a regulatory issue and may ultimately be resolved by future regulatory guidance.
- Determination letter request – Tony monitors and keeps his clients up-to-date on changes to the Treasury-IRS's determination letter program. Also included in the writing sample portion of W&J's submission is an article on this subject.
- Voluntary closing agreements – Tony negotiated a voluntary closing agreement with the IRS for a public community college related to FICA tax compliance issues.

Assigned Professionals

Tony Roda, who will be the project lead and primary point of contact for LACERA, has extensive experience representing state and local governmental pension plans on federal legislative and regulatory matters. Prior to joining W&J, he served as a Congressional staff person for three Members of Congress over a 10-year period. Tony earned a B.A. in Government and Politics from the University of Maryland, J.D. from the Catholic University of America, and an LL.M. in Taxation from the Georgetown University Law Center. He is a member of the District of Columbia, Virginia and U.S. Supreme Court bars.

Tony will be joined in a core team with two other W&J attorneys:

Nick Karellas, who joined W&J earlier this year as a principal, brings extensive federal tax and Capitol Hill experience. He served as tax counsel to Rep. Lynn Jenkins (R-KS), a member of the House Ways and

Means Committee, and most recently handled tax issues for the National Federation of Independent Business. Nick has a B.S. from the University of Illinois, J.D. from Saint Louis University Law School, and an LL.M. in Taxation from the Georgetown University Law Center.

Nicole Ruzinski Bertsch is an Associate at W&J and has worked on numerous federal tax projects for our state and local governmental plan clients, both legislative and regulatory. Nicole has experience at both the federal and state government levels. While in law school, she served as a legal intern for the U.S. Tax Court. Nicole earned a B.A. from the University of Wisconsin and J.D. from the Catholic University of America.

While these three professionals will comprise LACERA's core team at W&J, we will utilize other professionals at the firm if a need arises.

References

Mary Anne Ashley
Chief, Legislative Affairs Division
CalPERS
MaryAnne.Ashley@calpers.ca.gov
(916) 795-3991

W&J has represented CalPERS on retirement issues since early 2015. W&J provides CalPERS with written weekly and monthly reports on relevant federal legislative and regulatory matters affecting public pensions and retirement policy, in general. We participate in regularly-scheduled conference calls with staff, phone-in briefings during board meetings, and periodic in-person briefings at board meetings in Sacramento and off-site locations. W&J maintains an on-going dialogue with key members of the California delegation and arranges meetings in Congress for CalPERS staff.

Hank Kim
Executive Director and Counsel
National Conference on Public Employee Retirement Systems
hank@ncpers.org
(202) 624-1458

W&J has represented NCPERS since 2009. Tony Roda frequently writes articles for the NCPERS Monitor (a sample is included in this RFP response), makes presentations at the client's national conferences, and participates in webinars for its members. Tony and Hank Kim work closely together and participate in stakeholder meetings in Washington as well as meetings in Congress and with federal departments and agencies.

Jonathan Needle
Chief Legal Officer
Houston Firefighters' Relief and Retirement Fund
jonathan@hfrff.org
(281) 372-5100

W&J has represented HFRRF since 2002. The initial project resulted in enactment of Internal Revenue Code section 72(t)(10), which is a waiver from the early withdrawal tax penalty for public safety employees who reach age 50. Since that time, W&J has worked on legislative and regulatory matters for HFRRF, organized client fly-ins for HFRRF's staff and trustees with members of the Texas delegation and committee staff, and reported on major developments and opportunities for the client's chief interests.

Mary Beth Foley
General Counsel
Ohio Police & Fire Pension Fund
mbfoley@op-f.org
(614) 628-8361

W&J has represented OP&F since 2011. W&J's initial project related to OP&F's pending determination letter request, which ultimately resulted in OP&F receiving a positive letter from the IRS. Since then, W&J has worked on behalf of OP&F on the key federal legislative and regulatory matters affecting public plans and recently began a legislative project on an early age Medicare opt-in for public safety employees. W&J maintains contact with members of the Ohio Congressional delegation and arranges meetings on Capitol Hill for OP&F's staff and trustees.

Fees, Costs, Billing Practices, and Payment Terms

Given the anticipated scope of work on behalf of LACERA, which includes issues related to retirement, health care and Social Security, and the current pricing levels for W&J's existing public pension plan clients, we believe that a fixed retainer of \$15,000 per month is reasonable starting point for discussion.

The retainer amount would include any routine, day-to-day expenses incurred by the firm, such as telephone charges, copying, taxi fares, and other local expenses. Significant expenses, such as airfare to attend meetings at LACERA's headquarters and lodging in Los Angeles for the meetings, will be charged to LACERA in addition to the retainer amounts.

W&J will tailor its billing practices to the reasonable needs of its clients. Normally, we will bill retainer clients on a quarterly basis and payment will be due to W&J 30 days after receipt of the invoice.

Conflicts of Interest

W&J does not represent any of the entities mentioned in the Conflicts section of LACERA's RFP.

We anticipate that our current clients in the state and local governmental pension plan community will be compatible with LACERA's interests. In fact, we believe that our current client base will provide synergy for LACERA's interests on federal legislative and regulatory matters.

Regarding LACERA's health care policy interests, please be aware that W&J has numerous clients in the pharmaceutical and health insurance industries. As a consequence, W&J may have conflicts on matters related to pharmaceutical pricing, cost controls or similar issues. If LACERA anticipates that conflicts are likely, one possibility is for W&J to subcontract with a consultant who would provide the services on these issues.

Shane Doucet of DC Consulting only recently departed W&J because of client conflicts on issues related to the international taxation of corporate income. While at W&J, Shane worked extensively with me on the firm's public pension clients, including CalPERS. He was instrumental in developing the pre-age 55 Medicare opt-in proposal for public safety officers and attended numerous meetings on Capitol Hill and with outside interest groups on this issue. Shane would be free of conflicts on health care and could provide expertise on the issues of interest to LACERA. I've included Shane's biography following the biographies of the W&J core team.

If LACERA chooses to utilize Shane Doucet as a subcontractor and an extension of W&J, the monthly retainer amount quoted above would remain the same and Shane would be paid by W&J for his work.

Claims

W&J has not settled any past claims related to services contemplated in this proposal and does not have any claims pending against it or threatened litigation related to services contemplated in this proposal. There are no administrative, ethical or disciplinary investigations or proceedings against W&J or any of its professionals currently or prior to their employment with the firm.

Insurance

W&J carries \$4 million in professional liability insurance. The carrier is the Chubb Group of Insurance Companies. It has a financial strength rating of A++ by the A.M. Best Company.

Samples of Written Work

I have included three samples of my recent written work: (1) Legislative and regulatory overview of the Trump Administration and its potential impact on public pension plans, *NAPPA Report April 2017*; (2) In-depth analysis of the Treasury-IRS regulations on normal retirement age, *NAPPA Report April 2016*; and (3) Discussion of the changes to the Treasury-IRS determination letter program, *NCPERS Monitor September 2016*.

Other Information

The *ad hoc* Public Pension Network, which is a group of stakeholders including NCPERS, NASRA, NCTR, employer groups (e.g., National Conference of State Legislatures, National League of Cities, and the Government Finance Officers Association), public employee unions and AARP, meets periodically in Washington, D.C. to discuss key legislative and regulatory issues affecting public plans. Tony Roda attends these meetings on behalf of NCPERS and his public pension clients. This is an invaluable resource for intelligence and lobbying strategies that W&J would be able to provide LACERA.

W&J has a staff of legislative assistants, associates and government relations experts. They are available to write Congressional hearing and markup reports or cover activities of federal agencies. They also conduct research into policy or legal areas of interest to our clients.



Anthony J. Roda

Principal

Tony Roda has been actively involved in public policy since 1982. Today, he is able to draw upon a depth of experience, and contacts in the legislative, regulatory and political areas to assist his clients meet their objectives in Washington.

Tony became associated with Williams & Jensen in 1992 and became a principal of the firm in 1995. He is adept at planning and executing the broad strategies and day-to-day tactics needed for success in Congress and the federal agencies, such as identifying and organizing bipartisan Congressional allies and private sector coalitions, drafting legislation, white papers and talking points, shaping legislative histories, preparing witnesses for Congressional hearings, and providing overall strategic advice. Tony has managed projects that have resulted in enacting changes to federal law (including the Internal Revenue Code), securing federal appropriations funding, and obtaining specific regulatory relief.

While handling a variety of subject areas, Tony has spent considerable time on federal taxation, national defense and intellectual property. He has spoken at several national conferences on law and legislation affecting public pensions and is a member of the National Association of Public Pension Attorneys. Tony has authored numerous articles on federal legislation and regulations affecting public pension plans.

Professional background

Prior to joining Williams & Jensen Tony worked for three Members of the U.S. House of Representatives - Congressmen Stewart McKinney of Connecticut, Steve Gunderson of Wisconsin and Minority Whip Newt Gingrich of Georgia - as well as a Member of the British House of Commons. At age 23 Tony was named Legislative Director to Congressman McKinney. During his tenure in the Leadership staff, he served as the point person for private sector coalition building and long-term legislative strategy.

Originally from Stamford, Connecticut, Tony and his wife Jennifer and their children Nicholas, Elizabeth and Caroline now live in Alexandria, Virginia. He coached youth baseball and softball for many years and served on the Board of Directors of Alexandria Little League. Tony is Vice Chairman of the University of Maryland's Center for American Politics and Citizenship.

Education

University of Maryland, B.A., 1983
The Catholic University Columbus School of Law, J.D., 1989
Georgetown University Law Center, L.L.M., (Tax), 1995

Bar Admissions

District of Columbia
Virginia

Court Admissions

U.S. Supreme Court



Nick K. Karellas

Principal

Nick Karellas joined Williams & Jensen as a Principal in 2017. Mr. Karellas specializes in tax and trade issues, and helps clients develop and execute advocacy efforts on Capitol Hill.

Professional background

Mr. Karellas served as the Tax Counsel to Ways and Means member and former Vice Chair of the Republican Conference Representative Lynn Jenkins (R-KS) from 2011 until 2014. In this role, he was responsible for the Congresswoman's tax and trade portfolio for the Committee. He also worked as a legislative aide for Senator Kit Bond (R-MO), where he focused on economic development, transportation, energy, trade, and biotechnology policy. Most recently, Mr. Karellas was the Tax Counsel at the National Federation of Independent Businesses.

Education

Saint Louis University School of Law, J.D.

Georgetown University Law Center, LL.M in Taxation, with distinction, Certificate International Taxation

University of Illinois at Urbana-Champaign, B.S.

Bar Admissions

Illinois



Nicole M. Ruzinski

Associate

Nicole Ruzinski joined Williams & Jensen in 2014 as a Legislative Analyst before becoming an Associate with the firm. Ms. Ruzinski specializes in monitoring and analyzing legislative and regulatory proposals and legal research.

Professional background

Prior to joining Williams & Jensen, Ms. Ruzinski worked in government affairs at several offices in Washington, D.C. She also interned for the House of Representatives. While in law school, Ms. Ruzinski served as a legal intern for the U.S. Tax Court. Before moving to Washington in 2009, she served as a legislative assistant to Wisconsin State Senator Alberta Darling managing the Senator's district office and coordinating constituent outreach. Ms. Ruzinski also worked on the Senator's 2008 re-election campaign. In addition, she worked as a Finance Intern for the Republican Party of Wisconsin.

Education

University of Wisconsin, Madison, B.A., 2008

Catholic University of America, J.D., 2012

Bar Admissions

District of Columbia



Shane Doucet is a Principal at Doucet Consulting Solutions LLC, a public policy and public affairs firm. Over the last 17 years, he has represented clients in a variety of areas including health care, public pensions, law enforcement, trade, national security and high-tech. He has been a leading voice on behalf of his clients on issues related to the Medicare Modernization Act of 2003, the Pension Protection Act of 2006, the Genetic Information Nondiscrimination Act of 2008, the Affordable Care Act of 2010 and the 21st Century Cures Act of 2016. Mr. Doucet has specialized in work to promote health and wellness measures before Congress, the Administration, HHS, CMS, EEOC and the NAIC. He led an effort in 2015-2016 comprised of the leading population care management companies before the EEOC on the utilization and evidence of workplace wellness programs.

Mr. Doucet has represented healthcare coalitions committed to liberating health data to improve patient and consumer data accessibility and promote innovative uses of data to improve quality of care. He led successful coalitions to bring greater transparency to healthcare costs that resulted in the first ever publication of Medicare Part B payments in 2014.

Mr. Doucet has moderated panels comprised of top union, industry and trade association representatives on the impact of health reform and has been a featured speaker across the country on key provisions of the Affordable Care Act and the recently passed American Health Care Act. He has also been a featured speaker for such organizations as the Population Health Alliance, American Heart Association, National Coalition for Promoting Physical Activity, California Employee Retirement System Educational Forum and International Foundation of Employee Benefit Plans. He has also written opinion pieces in [The Hill newspaper](#) and contributed to workplace wellness articles in the [Journal of Occupational and Environmental Medicine](#).

Before joining the private sector, Mr. Doucet spent time on Capitol Hill working for Congressman Chris John (D-LA) who is the former Chairman of the Blue Dog Democrats and served on the Energy and Commerce Committee's Subcommittee on Health. While there, he wrote the Rural Education Development Initiative (REDI) Act, legislation designed to assist poor rural school districts which was signed into law as part of the No Child Left Behind Act of 2001. He also spent time as a legislative aide for State Senator Phil Short in Louisiana.

Mr. Doucet serves in the District of Columbia Air National Guard as the Inspector General for the 113th Wing. With his experience in population health, Mr. Doucet initiated an education program "Wellness Warrior" to help soldiers and airmen improve and maintain their physical, mental and social health and well-being.

He has a B.A. in History and English from Tulane University and M.A. in National Security and Strategic Studies *with distinction* from the U.S. Naval War College.

He, his wife Heather, three daughters Reese, Massey and Sisi along with their black lab Cajun and cat, Jeffrey, reside in Falls Church, Virginia.

The Trump Administration and the 115th Congress: Impact on Public Pension Plans

By: Tony Roda

Reform of the federal tax code, the implementation of the Puerto Rico Oversight Management and Economic Stability Act, and the new regulatory regime of the Trump Administration offer a roadmap for our review of the federal policy front for public pension plans.

Wading into Tax Reform

With the focus shifting abruptly from the effort to repeal and replace the Affordable Care Act to tax reform, it is important for us to give serious consideration to the tax code changes that would impact state and local governmental pension plans.

Reports are growing that as part of tax reform legislation, House Republicans are considering making it a requirement that all new contributions to defined contribution plans (e.g., IRAs, 401(k), 457(b) and 403(b) plans) be made under the rules related to Roth accounts. Those rules require that contributions be made with after-tax dollars but are tax-free at distribution.

This proposal was part of the 2014 tax reform legislation drafted by then-Chairman of the Ways and Means Committee Dave Camp (R-MI). According to Joint Tax Committee estimates from 2014, such a change applied only to IRAs and in conjunction with repealing the income restrictions on Roth accounts, would raise \$16.7 billion over 10 years. Identifying sources of new revenue is critical to the goal of lowering tax rates while ensuring that the overall tax reform legislation is revenue neutral. Given this, the Roth expansion proposal warrants attention by our community.

Further, because it is an amendment to the tax code, the Public Employee Pension Transparency Act (PEPTA), which was first introduced in December 2010, could be considered during the debate on tax reform. PEPTA is a mandatory, first-in-history, reporting requirement to the federal Treasury Department on the funding status of state and local pension plans. The House versions of PEPTA have always included a hammer – if the plan sponsor fails to meet the burdensome, costly, and complicated reporting requirements, then that entity loses its ability to issue bonds that are exempt from federal tax.

Why is reporting such a bad idea? Well, beyond the argument that on its face PEPTA is an intrusion on the rights of states and municipalities to manage their own affairs, PEPTA would require

the production and public posting of funding status calculations that are divorced from economic reality.

PEPTA contains a requirement that the funding status of a plan, if it is not calculated using fair market value or the specific interest rates found in the legislation, be recalculated using those interest rates (U.S. Treasury bond yield curve). The result of the recalculation will be that even well-funded pension plans will appear to be poorly funded. This recalculation does not reflect the actual rates of return of the plans or their diverse investments.

It will serve only to create negative headlines that will be used by opponents of defined benefit (DB) plans.

In addition, a second proposed amendment to the tax code – to authorize a new annuity accumulation plan for state and local governmental pension plans – is problematic. While the plan is purely optional for state and local governments, many in the public pension plan community view it as being positioned as an alternative and ultimate replacement for DB plans.

As a replacement to DB plans, it has many deficiencies. First, for firefighters and

other public safety employees, there are no survivor or disability benefits. These benefits are essential for public safety employees and their families. Second, employee contributions to the annuity plans are prohibited. That's right. Only employers may contribute. This runs counter to the vast majority of funding streams for public plans where both employees and employers contribute to the plans. Finally, the plan sponsor may choose to lower or not make a contribution to the plan in any given year, provided it is done uniformly. This creates great uncertainty on whether the benefit will be funded consistently from year-to-year.

Finally, red flags have been raised in previous tax reform proposals over provisions in the code that are unique to public pension plans, including the pick-up of employee contributions, the exemption of 457(b) plans from the 10 percent early withdrawal penalty, and the annual contribution limits for 457(b) and 403(b) plans.

Public Employee Pension Transparency Act

PEPTA is a mandatory, first-in-history, reporting requirement to the federal Treasury Department on the funding status of state and local pension plans.

The Trump Administration and the 115th Congress: Impact on Public Pension Plans *(continued)*

The widely used pick-up provision is an important tool for state and local plans. It needs to be preserved. Please note that legislation is being prepared for introduction by House Budget Committee Chairman and Ways and Means Committee Member Diane Black (R-TN), which would add flexibility to the pick-up provision. Revenue Ruling 2006-43 prohibits the use of the pick in situations where a state or local pension plan participant is given an election between plans or plan tiers with different employee contribution rates. From what we can determine at this time, Rep. Black's bill would clarify that this type of election would not invalidate the pick-up treatment of employee contributions.

All of these matters will need to be monitored closely as tax reform legislation is developed over the next few months.

Implementation of PROMESA

State and local governmental pension plans breathed a sigh of relief upon the enactment of the Puerto Rico Oversight Management and Economic Stability Act of 2016 (PROMESA). The final product did not contain PEPTA or the annuity accumulation plan, which were included in earlier legislation on Puerto Rico, S. 2381 (114th Congress), introduced by Senate Finance Committee Chairman Orrin Hatch (R-UT).



To be clear, all pension-related provisions in PROMESA relate only to Puerto Rico's public plans. However, two appointments to the Puerto Rico Financial Oversight and Management Board (Oversight Board) are likely to ensure that the macro issues related to state and local plans in the 50 states will be kept alive in the Oversight Board's deliberations. Andrew Biggs of the American Enterprise Institute has been a vocal and consistent critic of public pension plans. David Skeel, a professor of corporate law at the University of Pennsylvania, has advocated allowing states to use federal bankruptcy protection to modify their pension obligations.

In addition, there are several substantive areas of PROMESA that offer an opening for general discussions of state and local plans. Moreover, decisions made in these areas could provide a blueprint for future federal legislative proposals impacting public pension plans. These areas include:

- 1) In conjunction with the development of a fiscal plan, the Oversight Board has already recommended that Puerto Rico's pension costs be reduced by 10 percent.
- 2) The Board at any time may submit recommendations to the Governor or the legislature on actions the territorial government may take to ensure compliance with the fiscal plan, or to otherwise promote the financial stability, economic growth, management responsibility and service delivery efficiency of the territorial government, including recommendations related to the establishment of alternatives for meeting obligations to pay for the pensions of territorial governments. (Emphasis added)
- 3) If the Board determines, in its sole discretion, that a pension system of the territorial government is materially underfunded, it must conduct an analysis prepared by an independent actuary of the pension system to assist in evaluating the fiscal and economic impact of the pension cash flows.
- 4) A Congressional Task Force on Economic Growth in Puerto Rico, which is chaired by Senator Hatch, will issue a report including recommendations for changes to federal law and programs designed to spur sustainable long-term economic growth.

Given this, implementation of PROMESA regarding actions taken on Puerto Rico's public pension plans and the debates surrounding those actions should be closely watched for any spillover to federal legislation or regulation of the governmental plans in our 50 states.

Regulatory Environment

Two federal regulatory projects are of particular interest to the public pension plan community – the application of normal retirement age (NRA) rules to state and local plans and the definition of the term *governmental plan* under the Internal Revenue Code.

Proposed regulations have been pending since January, 2016 on the NRA issue, which is a tax code qualification requirement for state and local governmental plans. The plan community was generally pleased with the proposed regulations and very few comment letters were submitted. Prior to the November election, we expected the final rules on NRA to be released at the end of 2016 or early 2017.

The Trump Administration and the 115th Congress: Impact on Public Pension Plans *(continued)*

However, soon after his inauguration, President Trump issued a regulatory freeze and then an additional requirement that, for any new regulation issued, the issuing agency must identify two regulations to be eliminated. This has clouded the issuance of all new regulations, including the final NRA regulation. As we await the final NRA regulation, please review Treasury Notice 2012-29 for the current state-of-play on the rules as they apply to governmental plans.

Also caught in the new regulatory environment is a proposed rule defining the term *governmental plan* under Internal Revenue Code section 414(d). The Treasury Department and IRS released an Advance Notice of Proposed Rulemaking in November, 2011. Since that time, we have been awaiting the release of a proposed rule on the definition.

Talks are on-going between Treasury-IRS and the Office of Management and Budget (OMB) on how tax regulations will be treated under the new regulatory regime. Under a 1983 memorandum of agreement between OMB and IRS, tax regulations, except for those with a significant economic impact, are exempt from these types of executive orders. Yet, that approach could be rethought by the Trump Administration.

Sub-regulatory guidance, such as Treasury-IRS notices, revenue rulings and revenue procedures, also play a critical role in the administration of public plans. IRS Commissioner John Koskinen recently said that the IRS plans to resume issuing sub-regulatory guidance.

Conclusion

There is certainly a lot on the waterfront in Washington regarding state and local pension plans. I view that our collective goal during the 115th Congress and the first two years of the Trump Administration is to maintain federal law and regulation in a manner that allows state and local plans to operate efficiently and with minimal interference from the federal government.

Tony Roda is a partner at the Washington, D.C. law and lobbying firm Williams & Jensen, where he specializes in legislative and regulatory issues affecting state and local pension plans.

Mark Your Calendar



2018 Winter Seminar - Tempe, AZ

Wednesday, February 21 - Friday, February 23, 2018
Tempe Mission Palms Hotel



2018 Legal Education Conference - Savannah, GA

Tuesday, June 26 - Friday, June 29, 2018
New Attorney Session on June 26th
Savannah Hyatt Regency



2019 Winter Seminar - Tempe, AZ

Wednesday, February 20 - Friday, February 22, 2019
Tempe Mission Palms Hotel



2019 Legal Education Conference - San Diego, CA

Tuesday, June 25 - Friday, June 28, 2019
New Attorney Session on Tuesday, June 25, 2019
Sheraton San Diego

Proposed Regulations on Normal Retirement Age

By: Tony Roda

The Federal Register of January 27, 2016, contained a proposed rule that is significant to state and local governmental pension plans – Applicability of Normal Retirement Age Regulations to Governmental Pension Plans.¹ The proposed rule has been long in the making. However, given the initial reaction of the plan community, it may have been well worth the wait.

Background

Final regulations on normal retirement age (NRA) were released in 2007,² but the applicability of those regulations to governmental plans has been delayed by a series of Treasury-IRS guidance.³ In the interim, individual plans and national groups representing our community, such as the National Conference on Public Employee Retirement Systems (NCPERS), the National Council on Teacher Retirement (NCTR), and the National Association of State Retirement Administrators (NASRA), have submitted formal comments, attended in-person meetings with officials of the U.S. Department of the Treasury and Internal Revenue Service (IRS), and met in conferences and other forums to discuss the issues presented by the 2007 regulations. They have maintained a steady drumbeat on the plan community's key concerns, including whether a plan can base its NRA solely on years of service (YOS) or YOS in combination with age.

As a testament to how far the Treasury and IRS have advanced in their thinking about this key question, please remember back to the years immediately after the release of the 2007 regulations when our community was told repeatedly that an NRA based exclusively on YOS or YOS in combination with age would not comply with the requirements of the rule. Contrast that thinking to this statement in the explanatory section of the recently-released, proposed regulation: "The Department of the Treasury and the IRS generally agree with those commenters who indicated that the pre-ERISA vesting rules applicable to normal retirement age may be read to permit a governmental plan to use a normal retirement age that reflects a period of service." We are gratified to see that this general statement of policy is reflected in the structure of the proposed rule, particularly in the safe harbors.



Final regulations on normal retirement age (NRA) were released in 2007, but the applicability of those regulations to governmental plans has been delayed by a series of Treasury-IRS guidance.

Treasury Notice 2012-29

Treasury Notice 2012-29 not only provided the most recent delay in the application of the 2007 regulations to governmental plans, but also discussed the intention of the Treasury and IRS to make two significant changes to the way in which the 2007 regulations would apply to governmental plans.

First, the Notice stated that a plan that does not provide for the payment of in-service distributions before age 62 would not fail to satisfy the regulation merely because the plan has an NRA that is earlier than otherwise permitted under the regulations.

Second, the May 2007 regulations provided for certain safe harbors, including one for public safety plans that have an NRA of 50. Notice 2012-29 made clear that it would be the intention of Treasury-IRS in the proposed regulations to clarify that

this safe harbor would apply to public safety employees even if they were a subset of a larger pool of public employees covered by a plan.

Chain of Authority

I know that I am not the only practitioner who has found it challenging to follow the chain of statutory and regulatory authority that connects NRA, plan qualification and governmental pension plans. The following is my attempt to link that chain, but in the words of Jacob Marley's ghost in *A Christmas Carol*, "It is a ponderous chain!"

1. Compliance with the 2007 regulations is necessary for plan qualification under Internal Revenue Code (IRC) section 401(a). The regulations generally require that a pension plan be established and maintained primarily to provide systematically for the payment of definitely determinable benefits over a period of years, usually for life, after retirement.⁴ (emphasis added)

Proposed Regulations on Normal Retirement Age (*continued*)

2. The regulations include two exceptions to the general rule that payments commence after retirement: (1) payments may commence after an employee reaches age 62;⁵ and (2) payments may commence after attainment of NRA.
3. A plan that provides in-service distributions prior to age 62 on its face fails to meet the first exception. Therefore, it must meet the second exception, which is triggered by attainment of NRA.
4. Under IRC section 411(e)(2), NRA under a governmental plan must always satisfy the rules in place prior to enactment of the Employee Retirement Income Security Act of 1974, which are commonly referred to as the pre-ERISA vesting rules.⁶
5. Under the pre-ERISA rules, the terms of a governmental plan are not required to include an explicit definition of NRA in order to satisfy section 401(a). Instead, a plan's NRA may be deduced from other plan provisions.⁷ However, in the absence of an explicit definition of NRA, the terms of the plan must specify the earliest age at which a participant has the right to retire without consent of the employer and receive retirement benefits based upon the amount of the participant's service on the date of retirement at the full rate set forth in the plan (that is, without actuarial or similar reduction because of retirement before some later specified age). That age (the earliest age described in the preceding sentence) will be considered the plan's NRA for purposes of any statutory or regulatory requirements.
6. Under the 2007 regulations, the NRA under a governmental plan must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.⁸
7. The 2016 proposed regulations provide safe harbors through which plans may satisfy the reasonably representative requirement (RRR).
8. When read together, the 2007 regulations and 2016 proposed regulations create the following ways in which a plan may satisfy the RRR:
 - a) NRA of age 62 or later.
 - b) Safe harbors contained in the proposed regulations (discussed below).
 - c) NRAs that are not earlier than age 55 but are below age 62 will be analyzed by a facts and circumstances test. A reasonable, good faith determination made by the employer will be given deference.
 - d) NRAs that are lower than age 55 are deemed to not satisfy the RRR, unless the IRS Commissioner determines otherwise on the basis of facts and circumstances.

Safe Harbors (2016 Proposed Regulations)



Treasury Notice 2012-29 not only provided the most recent delay in the application of the 2007 regulations to governmental plans, but also discussed the intention of the Treasury and IRS to make two significant changes to the way in which the 2007 regulations would apply to governmental plans.

*Safe harbors for public safety*⁹ – The proposed regulations include the age 50 safe harbor that was included in the 2007 regulations with the modification that was outlined in Notice 2012-29 (discussed above). The proposed regulations also add two additional safe harbors for public safety employees: (1) rule of 70 – the participant's age and years of credited service are added together and must total 70 or higher; or (2) attainment of 20 years of credited service.

Safe harbors for all other governmental plans – First, there is a general safe harbor (also referred to as the rule of general application) that is satisfied if the plan has an NRA of 62 or if the NRA is the later of 62 or another specified date, such as the fifth anniversary of plan participation. Additional safe harbors are as follows: later of age 60 or the age at which the participant has at least five years of credited service; later of age 55 or the age at which the participant has at least 10 years of credited service; rule of 80; or the earlier of the age at which the participant has reached 25 years of credited service or the NRA under another safe harbor.

Proposed Regulations on Normal Retirement Age *(continued)*

Separation of Service

The rule of general application described previously is further described in Notice 2012-29 and in the overview section of the proposed regulations. It states, “(c)onsistent with Notice 2012-29, the proposed regulations would provide that a governmental plan that does not provide for the payment of in-service distributions prior to age 62 would not fail to satisfy §1.401(a)-1(b)(1) under these proposed regulations merely because the pension plan has a normal retirement age that is earlier than otherwise permitted under the requirements of §1.401(a)-1(b)(2) of the 2007 NRA regulations (as proposed to be amended by the proposed regulations).” (emphasis added) Of course, this begs the question of what is an in-service distribution or conversely what constitutes a separation from service.

The final regulations on IRC section 409A, which impose restrictions on nonqualified deferred compensation and are applicable to governmental nonqualified compensation, discuss the parameters of the term separation from service, “The Treasury Department and IRS believe that a definition of separation from service that is objectively determinable, nondiscretionary and predictable, and not subject to negotiations between the parties is necessary to properly implement the legislative intent behind section 409A... The Treasury Department and the IRS continue to believe that the definition of separation from service should be based upon an objective determination of whether the service provider continues to provide significant services to the service recipient.”

Internal Revenue Regulation section 1.409A-1(h)(1)(i) provides that in general an employee separates from service with the employer if the employee dies, retires, or otherwise has a termination of employment with the employer.

The Regulations¹⁰ further provide that whether a termination of employment has occurred is based on whether the facts and circumstances indicate that the employer and employee reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the employee would perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed (whether as an employee

or an independent contractor) over the immediately preceding 36-month period (or the full period of services to the employer if the employee has been providing services to the employer less than 36 months). The facts and circumstances to be considered in making this determination include, but are not limited to, whether the employee continues to be treated as an employee for other purposes (such as continuation of salary and participation in employee benefit programs), whether similarly situated service providers have been treated consistently, and whether the employee is permitted, and realistically available, to perform services for other service recipients in the same line of business.



The following example is provided: An employee may demonstrate that the employer and employee reasonably anticipated that the employee would cease providing services, but that, after the original cessation of services, business circumstances such as termination of the employee’s replacement caused the employee to return to employment.

Although the employee’s return to employment caused the employee to be presumed to have continued in employment because the employee is providing services at a rate equal to the rate at which the employee was providing services before the termination of employment, the facts and circumstances in this case would demonstrate that at the time the employee originally ceased to provide services, the employee and the service recipient reasonably anticipate that the employee would not provide services in the future.

While the concept of separation from service is discussed in various Treasury-IRS guidance and Tax Court rulings,¹¹ the regulations under section 409A provide the most recent and authoritative treatment of the term.

Effective Date

The proposed regulations state that they will become effective for employees hired during plan years beginning on or after the later of (1) January 1, 2017 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register.

Note that this is a significant change from the effective date included in Notice 2012-29, which triggered not for employees

Proposed Regulations on Normal Retirement Age *(continued)*

hired during subsequent covered plan years, but for annuity starting dates beginning during those subsequent covered years. The effective date included in the proposed rules would grandfather all employees hired prior to any covered plan year. This would effectively grandfather all existing employees and even those hired right up until the beginning of a covered plan year.

Conclusion

As you review the proposed regulations, please bear in mind that compliance with the final version of these regulations will be a requirement for plan qualification under the Internal Revenue Code, so it is critical that plans take the proposed rules seriously and review them in light of their unique structure. Public comments are due on April 26.

Tony Roda is a partner at the Washington, D.C. law and lobbying firm Williams & Jensen, where he specializes in legislative and regulatory issues affecting state and local pension plans.

ENDNOTES

¹81 Fed. Reg. 4599, January 27, 2016.

²72 Fed. Reg. 28604, May 22, 2007.

³The most recent delay in the effective date was included in Treasury Notice 2012-29. See also Treasury Notices 2007-69, 2008-98 and 2009-86.

⁴Internal Revenue Regulation Section 1.401(a)-1(b)(1).

⁵Internal Revenue Code Section 401(a)(36).

⁶Revenue Rulings 66-11 and 68-32 describe the interplay between NRA under the pre-ERISA vesting rules and IRC section 401(a). To satisfy these Rulings a plan that is subject to the pre-ERISA vesting rules must provide for full vesting of the contributions made to or benefits payable under the plan for any employee who has attained NRA under the plan and satisfied any reasonable and uniformly applicable requirements as to length of service or participation described in the plan.

⁷Rev. Rul. 74-147.

⁸Internal Revenue Regulation Section 1.401(a)-1(b)(2).

⁹Public safety employees are defined in the proposed regulation by reference to Internal Revenue Code (IRC) Section 72(t)(10)(B).

¹⁰Internal Revenue Regulation Section 1.409A-1(h)(1)(ii).

¹¹See Revenue Rulings 56-214, 69-647 and 81-26; Private Letter Ruling 201147038; *Barrus v. U.S.*, 23 A.F.T.R.2d 990 (DC NC 1969) and *Edwards v. Commissioner*, T.C.M. 1989-409, 57 T.C.M. 1217 (1989).

Mark Your Calendar



2017 Winter Seminar

Tempe, AZ (Tempe Mission Palms Hotel)
February 22 - February 24, 2017



2017 Legal Education Conference

Monterey, CA (Portola Hotel)
June 27 - June 30, 2017

New Attorney Session on June 27th



2018 Winter Seminar

Tempe, AZ (Tempe Mission Palms Hotel)
February 21 - February 23, 2018



2018 Legal Education Conference

Savannah, GA (Savannah Hyatt Regency)
June 26 - June 29, 2018

New Attorney Session on June 26th

Educational Program continued from page 2

Planet Hollywood Hotel. Organized into four modules, NAF debuted in May at the NCPERS Annual Conference. Participants who successfully complete all four modules of the NAF program may sit for a professional exam to earn the designation of Accredited Fiduciary.

Modules one and two, covering governance and the board's role and investments, finance and accounting, were presented in May. NAF participants can now take modules three and four.

Module three covers legal, risk management, and communication. Topics of study include the legal and risk oversight duties of boards and individual trustees, the role of the audit committee, dealing with the news media, managing corporate reputation, and communicating with stakeholders. Module four focuses on human capital. Topics include compensation and performance management strategies and succession planning. The early-bird fee for the upcoming session is \$550 until Sept. 22. Thereafter, the standard fee of \$750 will apply.

Also held in October is the Public Safety Employees conference runs Oct. 23-26. This one-of-a-kind conference focuses on the unique challenges facing public safety plans. Public safety workers hold some of the highest-risk jobs around, and their compensation and benefits generally reflect these risks. The program will address Broad issues affecting public pensions, such as funding and

investment performance, as well as topics specific to public safety employees, such as trends in disability benefits, deferred retirement, and stress management. Through Sept. 22, the registration fee is \$650 for fund members and \$850 for corporate members. After that date, the fees rise to \$800 and \$1,000 respectively.

To help us serve you best, registration is required for all NCPERS educational program. Please contact registration@ncpers.org.

The Future of the IRS Determination Letter Program

On June 29, 2016, the Internal Revenue Service (IRS) released Rev. Proc. 2016-37, which elaborates on previous guidance¹ regarding the new process for determination letters. Beginning in 2015, the IRS made clear its intention to eliminate the current five-year, cycle-based,² determination letter program that it established in 2007.³

This, of course, is very same program that provides many state and local governmental pension plans with great comfort – in a regulatory sense. An IRS-approved determination letter confirms that the plan is a qualified plan under Internal Revenue Code section 401(a).

In guidance released in 2015, the IRS said that, due “...to the need...to more efficiently direct its limited resources...”, effective January 1, 2017, the five-year determination letter program for individually designed plans (IDPs) would be

eliminated and the scope of the program going forward would be limited to initial plan qualification and qualification upon plan termination. In addition, Announcement 2015-19 said that, “...a sponsor will be permitted to submit a determination letter application in *certain other limited circumstances* that will be determined by Treasury and the IRS.” Emphasis added.

Rev. Proc. 2016-37, which generally takes effect on January 1, 2017, sets forth the requirements for when an IDP must be amended for statutory or regulatory changes and outlines the situations in which an IDP may request a determination letter.

Regarding the first point, it is important to note that Rev. Proc. 2016-37 does not relieve a plan from its mandate to operate in compliance with changes to qualification requirements, beginning with the effective date of the statutory or regulatory change. In order to assist plans the IRS intends to publish annually an Operational Compliance list that will identify changes to qualification requirements.

Further, after October 1 of each year, the IRS intends to publish a Required Amendments (RA) List, which will include all amendments for which an IDP must be amended to retain its federal tax qualification. In general, plans must adopt these items by the end of the second calendar year following the year in which the RA List is

continued on page 4

Determination Letter continued from page 3

published. For example, items on the 2016 RA List will have to be adopted by the close of calendar year 2018.

However, for governmental plans the deadline is extended.⁴ The remedial amendment period for disqualifying provisions is the later of (1) the rule stated in the paragraph above or (2) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date of issuance of the RA List in which the qualification requirements appear. The extended deadline for governmental plans is generally consistent with the approach taken with regard to the effective date in

the proposed regulations on normal retirement age. The approach reflects a recognition that, in most cases, governmental plan documents must be amended by legislative bodies.

On the second point, the new rules on when an IDP may request a determination letter are found in section 4.03 of Rev. Proc. 2016-37. Specifically:

- Initial Plan Qualification: A sponsor may request a determination letter for initial plan qualification, provided a favorable determination letter has never been issued for the plan.
- Plan Termination: Such an application is deemed as filed for plan termination if it is filed no later than the later of (1) one year

from the effective date of the termination or (2) one year from the date on which the action terminating the plan is taken. However, applications may not be filed later than 12 months from the date of distribution of substantially all plan assets in connection with plan termination.

Other Circumstances: At the outset, please know that the IRS has already stated that it will not expand its determination letter program beyond initial plan qualification and plan termination for calendar year 2017. Second, be aware that beginning in 2018 the IRS will make a decision each year as to whether to accept determination

continued on page 7

Don't Miss NCPERS' Social Media



The Voice for Public Pensions

Determination Letter continued from page 4

letter applications for circumstances other than initial plan qualification and plan termination. The IRS's case load and available resources will be significant factors in reaching this decision. The IRS and Treasury also intend to request comments from stakeholders on this question. Finally, the Revenue Procedure sheds some light on what other circumstances might rise to the level of warranting a determination letter. By way of example the following circumstances are listed: significant law changes, new approaches to plan design, and the inability of certain types of plans to convert to pre-approved (master, prototype and volume submitter) plan documents.

On August 11, the IRS held a live webinar to discuss Rev. Proc. 2016-37. During the webinar, the IRS elaborated on issues related to the reliance on existing determination letters. Essentially, the rule is that a plan may rely on an existing determination letter with respect to plan provisions that are not amended or affected by a change in the law. Of course, the corollary is true as well. Plans may not rely on existing determination letters with respect to plan provisions that are subsequently amended or affected by a change in the law.⁵ To effectuate this rule expiration dates contained in existing determination letters are no longer operative and determination letters issued to IDPs on or after January 4, 2016 no longer contain effective dates.

During the webinar, the IRS also took the opportunity to announce that the plan community should expect two additional pieces of guidance in the

near-term – (1) Modifications to the Employee Plan Compliance Resolution System (EPCRS) to align it with the changes to the determination letter program; and (2) Request for Comments on issues related to the changes to the determination letter program.

Please be aware that NCPERS will closely follow and report to its members any key developments on the determination letter program. ■

¹In particular, see IRS Announcement 2015-19 and Notice 2016-03.

²Cycles C and E are applicable to governmental plans.

³Rev. Proc. 2007-44.

⁴Rev. Proc. 2016-37, §§ 5.06, 8.02(2), 11 (Example 6) and 15.06(1)(a),(b).

⁵Ibid., §13.

Tony Roda is a partner at the Washington, D.C., law and lobbying firm Williams & Jensen, where he specializes in legislative and regulatory issues affecting state and local pension plans. He represents NCPERS and individual pension plans in California, Ohio, Tennessee, and Texas.

DON'T DELAY!

Renew Your Membership Online Today!

Renew Your Membership at <http://ncpers.org/Members/>



The Voice for Public Pensions

December 5, 2017

TO: Each Member
Board of Retirement

FROM: Steven P. Rice *SPR*
Chief Counsel

FOR: December 14, 2017 Board of Retirement Meeting

SUBJECT: Motion by Mr. Muir Concerning Member Communication on LACERA's
Proposed Disability Early Effective Date Legislation

MOTION BY MR. MUIR

Mr. Muir agendized a motion for the December 14, 2017 Board of Retirement (Board) meeting that, with respect to the erroneous denial of retroactive disability retirement benefits, instruct staff to:

1. Advise affected LACERA members of the error and the legislative action the Board is undertaking to enable the Board to correct the error; and
2. Provide progress reports to affected members during the legislative progress to enable affected members to contact their representatives in the Legislature.

This memo will provide information from staff to assist the Board in discussion of Mr. Muir's motion.

BACKGROUND

On July 13, 2017, the Board approved a recommendation to sponsor legislation to add a new error correction statute to the County Employees Retirement Law of 1937 (CERL) permitting the Board to correct decisions made between 2013 and 2015 as to the effective date of disability retirements that were based upon an error of law existing at the time of the decision. During this two-year period, the Board used a different approach than current counsel recommends in applying Government Code Section 31724 to effective date decisions.

In general, a member's effective date of disability retirement is the date of application. If a member applied for disability retirement after he or she last received regular compensation, it is possible for the member's effective date of disability retirement to be earlier than the date of application. Historically, if a member established that he or she was unable to ascertain the permanency of his or her incapacity until after the date

Each Member, Board of Retirement

Re: Member Communication on LACERA's Disability Early Effective Date Legislation

December 5, 2017

Page 2

following the last day of regular compensation, the member was entitled to an effective date of disability retirement as of that date rather than the date of application. Thus, the member was required to be unable to ascertain the permanency of his or her incapacity as of a single day – the date after the last day of regular compensation.

However, the approach that was used during the two-year period beginning in 2013 required that the member be unable to ascertain the permanency of his or her incapacity for the period from the date following the last day of regular compensation up to the date of application. Therefore, some members were denied an effective date of disability retirement earlier than the date of application under this approach but would have possibly been granted an earlier effective date if the historical approach had been used.

A copy of the Board memo for the July 13, 2017 meeting providing additional information is attached.

On July 13, 2017, it was too late in the current legislative session to introduce the bill. Accordingly, staff has been working with LACERA's state legislative advocate, Joe Ackler, to locate an author to introduce the bill in the next session beginning January 2018. If the bill is signed into law next year, it would have an effective date of January 1, 2019, at which time the Board would be able to hear applications for correction of its prior decisions on the early effective date issue.

CONSIDERATIONS

To aid in deciding Mr. Muir's motion, staff offers the following three considerations:

- There is a relatively small group of members (85) who are potentially affected by the legislation, based on research by the Disability Retirement Services (DRS) Division. However, as explained in the attached memo (page 5), not all of these members will necessarily be entitled to an adjustment of their benefits. In other words, there may not have actually been an error in each case or, if there was an error, it may have had no impact on the benefit amount. Staff will need to make a case by case analysis of each member who requests correction. Some members may decide that, because of the impact on Long Term Disability benefits or tax reasons, it is not advantageous for them to seek correction. Therefore, any letter that is sent now should be careful not to communicate to members that an error was actually made in their individual case or that they will necessarily receive additional benefits. If Mr. Muir's motion is approved by the Board, the letter should state that the legislation will

Each Member, Board of Retirement

Re: Member Communication on LACERA's Disability Early Effective Date Legislation

December 5, 2017

Page 3

provide members with an opportunity for Board review of the effective date determination under Section 31724 in their disability case but will not guarantee a change in the outcome of individual cases, each of which will be reevaluated separately and decided on its own facts.

- The Board discussion that led to the July 13, 2017 decision took place in open session over several meetings. The issue was considered at two Insurance, Benefits & Legislative Committee meetings (March 3, 2017 and June 15, 2017) and one Board meeting (July 13, 2017), and all Committee and Board actions recorded in the Minutes of those meetings. The Board has been transparent to members and the public about the issue and the proposed legislative solution. Any letter to members should confirm the Board's diligence and the positive step the Board took in deciding to pursue legislation.
- Any letter should also state that, if the legislation passes, LACERA will provide potentially affected members with written notice of their right to seek correction, if appropriate, of their disability retirement effective date by having the issue reconsidered by the Board of Retirement.

Attachment

c:	Robert Hill	Allan Cochran	Michael Herrera
	James Brekk	Ricki Contreras	
	John Popowich	Fern Billingsy	
	Bernie Buenaflor	Frank Boyd	
	Vanessa Gonzalez	Johanna Fontenot	



December 5, 2017

TO: Each Member
Board of Retirement

FROM: Fern M. Billiny 
Senior Staff Counsel

DATE: Meeting of December 14, 2017

SUBJECT: **COMPENSATION EARNABLE & PENSIONABLE COMPENSATION,
CORRECTIVE PAYMENT**

INTRODUCTION

Your Board is charged with determining which items of compensation qualify as pensionable earnings includable in the member's retirement allowance. The Chief Executive Office of the County of Los Angeles recently requested determination of the pensionability of two new pay items.

The Legal Office recommends exclusion of these items in the definitions of compensation earnable and pensionable compensation.*

COMPENSATION EARNABLE

In January of 1998, your Board determined that pursuant to the California Supreme Court's decision in Ventura County Deputy Sheriff's Association v. County of Ventura (1997) 16 Cal. 4th 483 ("Ventura"), certain items of remuneration must be included in the definition of "compensation earnable." Your Board then adopted Resolution 98-001 identifying those items. Since that time other Resolutions have been adopted when new items of compensation are determined to be included in or excluded from the definition of "compensation earnable." In making those determinations, your Board reviewed analysis of all items of compensation and adopted recommendations from the Legal Office regarding the definition of "compensation earnable."

* Compensation earnable applies to our legacy members subject to the County Employees Retirement Law ("CERL"), while pensionable compensation applies to our members subject to the California Public Employees' Pension Reform Act (PEPRA).

Section 31461 defines "compensation earnable." It states:

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

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

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

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

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

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

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

- (3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
 - (4) Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.
- (c) The terms of subdivision (b) are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003)110 Cal.App.4th 426."

PENSIONABLE COMPENSATION

On January 1, 2013, with the enactment of PEPRRA, new members are subject to the definition of "pensionable compensation." Section 7522.34(a) states:

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

This section provides that any compensation outside of base pay may not be included in final compensation when calculating a member’s retirement allowance. However, “base pay” is not defined in the statute. The section goes on to specifically delineate which items of compensation should be excluded.

Subdivision (c) states:

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

- (1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.
- (2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.
- (3) Any one-time or ad hoc payments made to a member.
- (4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.
- (5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.
- (6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
- (7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.
- (8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.
- (9) Employer contributions to deferred compensation or defined contribution plans.
- (10) Any bonus paid in addition to the compensation described in subdivision (a).
- (11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).
- (12) Any other form of compensation a public retirement board determines should not be pensionable compensation.”

NEW ITEMS OF COMPENSATION

The County Chief Executive Office recently informed LACERA of a proposed amendment to the County Code regarding the Horizons Plan necessary for Internal Revenue Service compliance. We reviewed the proposed amendment in preparing our recommendations. A summary of our analysis is attached for your convenience.

- 1) A new pay code for a one-time ad-hoc cash payment to make whole an employee who is reinstated (due to overturned discharge, suspension or demotion) as part of a corrective contribution to the Horizons Plan in instances where a portion of that corrective contribution cannot be made to the Horizons Plan due to Internal Revenue Code contribution limits. The part of the one-time, ad hoc corrective contribution that is in excess of those limits will be paid in cash.

This payment should be excluded for legacy members as it is an ad-hoc payment made to some members but not to all similarly situated members.

This payment should also be excluded for PEPRA members since it is not found on a public pay schedule. In order for additional compensation to be included in the definition of pensionable compensation, certain criteria must be met. Section 7522.34 requires all compensation to be paid in cash pursuant to “publicly available pay schedules.” As this payment is a one-time payment, not listed on a pay schedule, it should be excluded.

Recommendation: Exclude under 31461
Exclude under 7522.34

- 2) A new pay code for a one time, ad-hoc cash payment to make an employee whole where elective and/or non-elective deferrals that should have been made to the Horizons Plan were missed due to operational or administrative errors or failures, and a portion of the corrective contribution cannot be made to the Horizons Plan due to Internal Revenue Code contribution limits. The part of the one-time, ad hoc corrective contribution that is in excess of those limits will be paid in cash.

This payment should be excluded for legacy members as it is an ad-hoc payment made to some members but not to all similarly situated members.

Each Member
Board of Retirement
December 5, 2017
Page Six

This payment should also be excluded for PEPRA members since it is not found on a public pay schedule. In order for additional compensation to be included in the definition of pensionable compensation, certain criteria must be met. Section 7522.34 requires all compensation to be paid in cash pursuant to "publicly available pay schedules." As this is a one-time payment, not found on a public schedule, it must be excluded.

Recommendation: Exclude under 31461
Exclude under 7522.34

CONCLUSION

Consistent with the foregoing, we submit the attached Resolutions of the Board of Retirement specifying pay items as "Compensation Earnable" under Government Code section 31461 and "Pensionable Compensation" under Government Code section 7522.34.

IT IS THEREFORE RECOMMENDED your Board:

1. Adopt the attached Resolutions specifying pay items as "compensation earnable" and "pensionable compensation."
2. Instruct staff to coordinate with the County of Los Angeles to establish necessary reporting mechanism and procedures to permit LACERA to include the qualifying items in the calculation of final compensation.

Reviewed and Approved



Steven P. Rice
Chief Counsel

FMB/et
Attachments

**Attachment: Newly Discovered or Newly Created Codes
reviewed under Section 31461 and 7522.34**

Event	Description	Earnings Code Description	31461 Reference	7522.34 Reference	Analysis
INCLUDED under Section 31461					
OP100	Corrective payment to the Horizons Plan for a reinstated employee	A new pay code for a one-time ad-hoc cash payment to make an employee who is reinstated (due to overturned discharge, suspension or demotion) whole as part of a corrective contribution to the Horizons Plan in instances where a portion of that corrective contribution cannot be made to the Horizons Plan due to Internal Revenue Code contribution limits. The part of the one-time, ad hoc corrective contribution that is in excess of those limits will be paid in cash.	(b)(1)(A), (b)(1)(B)	(c)(2), (c)(3), (c)(9), (c)(11)	<p>This is a "one time, ad-hoc cash payment... due to operational or administrative errors or failures ... a portion of the corrective contribution cannot be made to the Horizons Plan due to Internal Revenue Code contribution limits...will be paid in cash."</p> <p>As such, it would meet the definition of subdivision (c)(2) based on being "Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment".</p> <p>As such, it would meet the definition of subdivision (c)(3) based on being "Any one-time or ad hoc payments made to a member".</p> <p>As such, it could meet the definition of subdivision (c)(9) based on being "Employer contributions to deferred compensation or defined contributions plans".</p> <p>As such, it would meet the definition of subdivision (C)(11) based on being "Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a)". Thus, it is recommended that this event code be classified as EXCLUDED from pensionable income for eligible new members as of 1/1/13.</p>
OP101	Corrective payment to the Horizons Plan due to administrative error	A new pay code for a one time, ad-hoc cash payment to make an employee whole where elective and/or non-elective deferrals that should have been made to the Horizons Plan were missed due to operational or administrative errors or failures and a portion of the corrective contribution cannot be made to the Horizons Plan due to Internal Revenue Code contribution limits. The part of the one-time, ad hoc corrective contribution that is in excess of those limits will be paid in cash.	(b)(1)(A), (b)(1)(B)	(c)(2), (c)(3), (c)(9), (c)(11)	<p>This is a "one time, ad-hoc cash payment to make an employee whole where elective and/or non-elective deferrals that should have been made to the Horizons Plan were missed due to operational or administrative errors or failures and a portion of the corrective contribution cannot be made to the Horizons Plan due to Internal Revenue Code contribution limits...will be paid in cash."</p> <p>As such, it would meet the definition of subdivision (c)(2) based on being "Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment".</p> <p>As such, it would meet the definition of subdivision (c)(3) based on being "Any one-time or ad hoc payments made to a member".</p> <p>As such, it could meet the definition of subdivision (c)(9) based on being "Employer contributions to deferred compensation or defined contributions plans".</p> <p>As such, it would meet the definition of subdivision (c)(11) based on being "Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a)". Thus, it is recommended that this event code be classified as EXCLUDED from pensionable income for eligible new members as of 1/1/13.</p>

BEFORE THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

RESOLUTION OF THE BOARD OF
RETIREMENT SPECIFYING ITEMS
OF REMUNERATION AS
“COMPENSATION EARNABLE”

RESOLUTION NO. 2017-BR006

WHEREAS, LACERA calculates retirement allowances based on a member’s “final compensation;” and

WHEREAS, LACERA is required to include in the calculation of “final compensation” a member’s base pay, and certain other items of remuneration, if such remuneration qualifies as “compensation” under Government Code section 31460 and “compensation earnable” under Government Code section 31461; and

WHEREAS, on March 4, 1998, the Board of Retirement adopted Resolution No. 98-004 specifying certain items of remuneration payable to employees of the County of Los Angeles which the Board determined qualify as “compensation” under Government Code section 31460 and “compensation earnable” under section 31461; and

WHEREAS, the Court’s ruling in Ventura County Deputy Sheriff’s Association v. County of Ventura (1997) 16 Cal. 4th 483 became final on October 1, 1997, and requires LACERA to include in the calculation of retirement allowances various forms of remuneration not formerly included; and

WHEREAS, the Board of Retirement adopted various Resolutions specifying additional items of remuneration qualify as “compensation” and “compensation earnable” under Government Code sections 31460 and 31461, respectively;

NOW THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The items of remuneration set forth in Attachment 1 do not qualify as “compensation earnable” as defined in Government Code section 31461, for purposes of calculating a member’s retirement allowance.

BOARD OF RETIREMENT,
LOS ANGELES COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

Shawn Kehoe
Chair, Board of Retirement

Approved as to Form:

ATTEST:

Steven P. Rice
Chief Counsel

Vivian H. Gray
Vice Chair, Board of Retirement

ITEMS OF COUNTY REMUNERATION WHICH DO NOT QUALIFY AS
"COMPENSATION," AS DEFINED BY GOVERNMENT CODE SECTION 31460,
AND/OR "COMPENSATION EARNABLE," AS DEFINED BY GOVERNMENT CODE
SECTION 31461.

<u>EARNINGS</u> <u>CODE NO.</u>	<u>ITEMS</u>
036	ESP SEVERANCE
075	UNION HALL HIRING VACATION/HOLIDAY BENEFIT
076	FAMILY LEAVE
090	ENHANCED VOLUNTARY TIME OFF LESS THAN 60 DAYS
091	ENHANCED VOLUNTARY TIME OFF GREATER THAN 60 DAYS
094	VACATION IN LIEU OF PAY
095	ENHANCED VOLUNTARY TIME OFF-SUPERIOR COURT
128	MILEAGE EARNINGS
129	PARKING
130	SHORT TERM DISABILITY – 60%
131	SHORT-TERM DISABILITY – 40%
140	SHORT TERM DISABILITY – 60% RDO
141	SHORT TERM DISABILITY – 40% RDO
151	INDUSTRIAL ACCIDENT – 100%
152	INDUSTRIAL ACCIDENT – 100% RDO
153	INDUSTRIAL ACCIDENT – 70%

154 INDUSTRIAL ACCIDENT – 70% RDO

158 LIMITED DUTY INDUSTRIAL ACCIDENT – 100%

159 LIMITED DUTY INDUSTRIAL ACCIDENTS – 70%

388 PSYCHIATRY JAIL BONUS

500 RELOCATE NON TAXABLE

502 RELOCATION ALLOWANCE

521 IRS PENALTY REIMBURSEMENT

524 ON-CALL FOR COURT APPEARANCE

527 RELIEF DAM OPERATOR, ON CALL

543 CALL BACK EXTRA COMPENSATION

559 MISCELLANEOUS LUMP SUM INCLUDED IN REG. OT

560 MISCELLANEOUS LUMP SUM NOT INCLUDED IN REG. OT

561 HOURS PAID BUT NOT WORKED, CALL-BACK

562 MENTAL HEALTH ALERT & PSYCH MOB RESP TEAM
STANDBY

563 RELIEF DAM OPERATIONS STAND-BY

564 TUITION REIMBURSEMENT

566 QUALIFIED FOR HAZARDOUS MATERIALS OVERTIME
CALC.

568 ASSESSMENT APPEALS FULL DAY INCREMENT (HOURLY
ITEM)

569 INTERNS & RESIDENTS ANNUAL LUMP SUM

574 STANDBY – INS WITNESS PROGRAM

650 PRESIDING JUDGE 4% BONUS

651 MEAL REIMBURSEMENT – RESIDENTS

652 MEAL REIMBURSEMENT – PLANT ENGINEERS

690 CELLULAR PHONE STIPEND – VOICEMAIL

691 CELLULAR PHONE STIPEND – DATA ONLY

692 CELLULAR PHONE STIPEND – VOICE AND DATA

699W FLEXIBLE WORK TIME EARNED

701 PAID OVERTIME

702 PAID OVERTIME – ACCRUE FLSA PREMIUM

703 FLSA COMP TIME EARNED-ACCRUE FLSA PREMIUM

705 COMPENSATORY TIME EARNED

707 FY93 COMPENSATORY TIME EARNED

708 FY93 FLSA COMP TIME EARNED – ACCRUE FLSA PREMIUM

709 FY93 FLSA COMP TIME EARNED OVRD – ACCRUE FLSA PREMIUM

710 DISASTER RELATED PAID OVERTIME

711 DISASTER COMP TIME EARNED (ACCRUED)

712 CONTRACT RELATED PAID OVERTIME

713 ER PHYSICIAN OVERTIME – DAY RATE

714 ER PHYSICIAN OVERTIME – WKDY EVE/WKND HOL DAY

715 ER PHYSICIAN OVERTIME – WKDY NITE/WKND HOL EVE NITE

716 GUARANTEED PREMIUM

717 PAID OVERTIME – GUARANTEED ACCRUED FLSA PREMIUM

718 FLSA COMP TIME EARNED – GUARANTEED ACCRUED
FLSA PREM

719 FLSA COMP TIME EARNED – GUARANTEED PAID PREMIUM

720 SPECIAL EVENTS OVERTIME

731 PREMIUM OVERTIME – SYSTEM

733 PREMIUM OVERTIME – MANUAL

735 FY93 ACCRUED FLSA PREMIUM OVERTIME (SYSTEM)

736 FY93 ACCRUED FLSA PREMIUM OVERTIME (MANUAL)

746 CALL BACK ACTUAL

747 CALL BACK GUARANTEED

761 STRAIGHT TIME AND ONE-HALF

775 SECONDARY OVERTIME

776 ALTERNATE OVERTIME

777 SECONDARY ASSIGNMENT OVERTIME

778 OVERTIME – FIRE DEPT. 56 HOUR

779 SECONDARY OVERTIME – FIRE DEPT. 56 HOUR

780 WORKDOWN OVERTIME – FIRE DEPT.

781 OVERTIME – FIRE DEPT. 40 HOUR

782 PLATOON/40/HOUR/DISPATCHER SCHED PREMIUM –
SYSTEM

783 DISPATCHER BRIEFING TIME

784 40 HOUR CAMP-GUARANTEED PREMIUM

791 ORDERED OVERTIME

792 UNCOMPENSATED BRIEFING TIME

793 COMPENSATED BRIEFING TIME – SYSTEM

794 COMPENSATED BRIEFING TIME – MANUAL

795 FY93 ORDERED FLSA COMP TIME EARN – ACCR FLSA
PREM

796 ORDERED FLSA COMP TIME EARN-ACCR FLSA PREM

799 FLEX REG HOURS BETWEEN 181 AND 192 FOR 40HR FIRE
FIGHTERS

901 COMPENSATORY TIME BUYBACK

902 PROTECTED COMPENSATORY TIME BUYBACK

904 ELECTIVE-LEAVE BUYBACK

905 FLSA COMP TIME BUYBACK – PREMIUM

906 FLSA COMP TIME BUYBACK – STRAIGHT

907 FY93 COMPENSATORY TIME BUYBACK

908 FY93 FLSA COMP TIME BUYBACK – PREMIUM

909 FY93 FLSA COMP TIME BUYBACK – STRAIGHT

916 VACATION IN LIEU OF PAY – BUYBACK

917 DISASTER COMP TIME BUYBACK

918 FY93-56 HOUR COMP TIME BUYBACK – FIRE DEPT.

919 ACCRUED PREMIUM BUYBACK – SYSTEM

920 FY93 FLSA COMP TIME BUYBACK – PREMIUM (MANUAL)

951 ESP VACATION PAYOUT

952 FINAL PAY LEAVE PAYOUT (SICK, HOLIDAY, OT)

953 ESP LEAVE PAYOUT

954 VACATION PAYOUT

955 VACATION IN LIEU OF PAY – PAYOUT

957 56-HOUR LEAVE PAYOUT

958 56-HOUR TC VACATION

961 ESP DEFERRED VACATION PAYOUT

962 DEFERRED LEAVE PAYOUT

963 ESP DEFERRED LEAVE PAYOUT

964 DEFERRED VACATION PAYOUT

967 56-HOUR DEFERRED LEAVE PAYOUT

968 56-HOUR DEFERRED VACATION PAYOUT

970 FLSA PREMIUM COMPENSATORY TIME – PAYOUT

971 FY93 COMP TIME PAYOUT (EXCLUDING PREMIUMS)

PA099 ROUNDING ADJUSTMENT

PE803 EXCESS STRAIGHT – FLSA COMP TIME TAKEN

PE804 EXCESS PREMIUM – FLSA COMP TIME TAKEN

PE806 EXCESS STRAIGHT – FY93 FLSA COMP TIME TAKEN

PE807 EXCESS PREMIUM – FY93 FLSA COMP TIME TAKEN

PE813 CAPE – EXCESS STRAIGHT – FY93 FLSA COMP TIME TAKEN

PE814 CAPE - EXCESS PREMIUM – FY93 FLSA COMP TIME TAKEN

PFA36 FLEX EARNINGS ADVANCE

PK094 VACATION IN LIEU OF PAY

PK096 SUPERIOR COURT VACATION IN LIEU OF PAY

PK801 COMPENSATORY TIME TAKEN

PK802 PROTECTED COMPENSATORY TIME TAKEN

PK803 FLSA COMP TIME TAKEN – STRAIGHT

PK804 FLSA COMP TIME TAKEN – PREMIUM

PK805 FY93 COMPENSATORY TIME TAKEN

PK806 FY93 FLSA COMP TIME TAKEN – STRAIGHT

PK807 FY93 FLSA COMP TIME TAKEN – PREMIUM

PK808 DISASTER COMP TIME TAKEN

PK810 CALL BACK ACCRUE – STRAIGHT TAKEN

PK811 CALL BACK GUARANTEED CTO – BUY BACK

PK812 DFR 1 YR - NON-FLSA COMPENSATORY STRT TIME –
USAGE

PK813 CAPE-FY93 FLSA COMP TIME TAKEN – STRAIGHT

PK814 CAPE-FY93 FLSA COMP TIME TAKEN – PREMIUM

PK815 DFR 1 YR – FLSA COMPENSATORY STRT TIME – USAGE

PK816 DFR 2 YRS – FLSA COMPENSATORY STRT TIME – USAGE

PK818 DFR 1 YR – FLSA PREMIUM OVERTIME USAGE

PK819 DFR 2 YR – FLSA PREMIUM OVERTIME USAGE

PK821 DFR 1 YR – CALL BACK - STRAIGHT USAGE

PO002 ELECTIVE LEAVE TERM PAY OFFSET

PO699 FLEXIBLE WORK SCHEDULE

PO703 STRAIGHT PAY OFFSET-FLSA COMP TIME EARNED –
ACCRUE

PO705	STRAIGHT PAY OFFSET – COMPENSATORY TIME EARNED
PO711	STRAIGHT PAY OFFSET – DISASTER COMP TIME EARNED ACC
PO796	STRAIGHT PAY OFFSET-ORDERD FLSA COMP TM EARN – ACCR
PT002	ELECTIVE LEAVE
PT003	NON-ELECTIVE LEAVE
PT006	DONATED SICK 100% LEAVE – USAGE
PT008	SICK LEAVE EARNED AT MTA/ATTORNEY
PT011	SICK – 100%
PT012	HOLIDAY
PT021	VACATION
PT030	SPECIAL PAID LEAVE
PT031	APPRAISERS LEAVE
PT032	INTERN/RESIDENT LEAVE
PT046	JUDICIAL ASSISTANT SPECIAL PAID LEAVE
PT081	BANK HOLIDAY
PT082	BANK VACATION
PT094	VACATION IN LIEU OF PAY
PT096	SUPERIOR COURT VACATION IN LIEU OF PAY
PT099	REGULAR EARNINGS – MID PAY PERIOD TERMINATION
PT113	SICK PRE-71
PT699	FLEXIBLE WORK TIME EARNED

PT801 COMPENSATORY TIME TAKEN

PT802 PROTECTED COMPENSATORY TIME TAKEN

PT803 FLSA COMP TIME TAKEN – STRAIGHT

PT804 FLSA COMP TIME TAKEN – PREMIUM

PT805 FY93 COMPENSATORY TIME TAKEN

PT806 FY93 FLSA COMP TIME TAKEN – STRAIGHT

PT807 FY93 FLSA COMP TIME TAKEN – PREMIUM

PT808 DISASTER COMP TIME TAKEN

PT810 CALL BACK ACCRUE - STRAIGHT TAKEN

PT811 CALL BACK GUARANTEED CTO – TERMINATION

PT812 DFR 1 YR – NON-FLSA COMPENSATORY STRT TIME –
USAGE

PT813 CAPE – FY93 FLSA COMP TIME TAKEN – STRAIGHT

PT814 CAPE – FY93 FLSA COMP TIME TAKEN – PREMIUM

PT815 DFR 1 YR – FLSA COMPENSATORY STRT TIME – USAGE

PT816 DFR 2 YRS – FLSA COMPENSATORY STRT TIME – USAGE

PT817 YTD – FLSA PREMIUM OVERTIME USAGE

PT818 DFR 1 YR – FLSA PREMIUM OVERTIME USAGE

PT819 DFR 2 YR – FLSA PREMIUM OVERTIME USAGE

PT820 YTD – CALL BACK – STRAIGHT USAGE

PT821 DFR 1 YR – CALL BACK – STRAIGHT USAGE

PTNHT HOLD CURRENT ACCRL – NON-ELECTIVE LVE –
TERMINATION US

PTVAT	SUPERIOR COURT, RESERVE VACATION – TERMINATION USAG
PTVPT	SUPERIOR CT, PRIOR YR RSRV VACATION – TERMINATION US
NONE	MEGAFLEX INDUSTRIAL ACCIDENT
NONE	COUNTY CAR (IMPUTED INC)
NONE	IMPUTED INCOME (DOMESTIC PARTNER)
NONE	IMPUTED INC (LIFE INSURANCE)
NONE	SECTION 170 OVERTIME
NONE	EARNED SALARY ADVANCE
NONE	VACATION PAY ADVANCE
NONE	56 HOUR OVERTIME
NONE	ADJUSTMENT NON-TAX
NONE	RETRO PAY
NONE	EARNED INCOME CREDIT
NONE	UNDERPAYMENT ADVANCE
NONE	O/S SICK PAY
NONE	RETRO ADVANCE
NONE	T/A MILEAGE
NONE	ADVANCED DISABILITY RETIREMENT
NONE	STD REFUND
NONE	LTD REFUND
NONE	LTDH REFUND

NONE	SIB REFUND
NONE	56 VILOP PAY
NONE	VOLUNTARY DEFERRED PAY
NONE	RETRO FLEX BASE
NONE	NR DEFERRED PAY
NONE	F.MF DEFERRED PAY
NONE	DEF LUMP SUM
NONE	DEFERRED PAY
NONE	VOLUNTARY SEPARATION PLAN
NONE	STOP PAYMENT
NONE	FIRE SUPPRESSION CAMP ASSIGNMENT – PREMIUM
NONE	FIRE SUPPRESSION CAMP ASSIGNMENT – COMPENSATORY TIME EARNED
OP100	CORRECTIVE PAYMENT, REINSTATED EMPLOYEE
OP101	CORRECTIVE PAYMENT, ADMINISTRATIVE ERROR

BEFORE THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

RESOLUTION OF THE BOARD OF
RETIREMENT SPECIFYING ITEMS OF
REMUNERATION AS "PENSIONABLE
COMPENSATION"

RESOLUTION NO. 2017-BR007

WHEREAS, Government Code section 7522.34 governs the determination of pensionable compensation for those members who became active members for the first time on or after January 1, 2013, who are subject to the California Public Employees' Pension Reform Act of 2013; and

WHEREAS, LACERA calculates retirement allowances based on a member's final compensation; and

WHEREAS, LACERA is required to include in the calculation of "final compensation," a member's base pay and certain other items of compensation, if such compensation qualifies as "pensionable compensation" under Government Code section 7522.34; and

WHEREAS, Government Code section 7522.34 defines "pensionable compensation" as:

" . . .the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules"; and

WHEREAS, the Board has analyzed each current pay item and determined whether or not those items should be included in "pensionable compensation"; and

WHEREAS, the Board may find it necessary from time to time to amend its determinations based on changes made by employers, the Legislature, or the Courts;

NOW THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. For purposes of calculating a member's retirement allowance, earnings on or after January 1, 2013, for members subject to Government Code section 7522.32, as set forth in Attachment No. 1 do not qualify as "pensionable compensation" as defined in section 7522.34.

BOARD OF RETIREMENT,
LOS ANGELES COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

Shawn Kehoe
Chair, Board of Retirement

Approved as to Form

ATTEST:

Steven P. Rice
Chief Counsel

Vivian H. Gray
Vice Chair, Board of Retirement

ITEMS OF REMUNERATION EARNED ON OR AFTER JANUARY 1, 2013, FOR MEMBERS SUBJECT TO GOVERNMENT CODE SECTION 7522.32, WHICH DO NOT QUALIFY AS "PENSIONABLE COMPENSATION" AS DEFINED IN SECTION 7522.34.

<u>EARNINGS</u> <u>CODE NO.</u>	<u>ITEMS</u>
200	76-INCH MOWER BONUS
201	ACTING DEPARTMENT HEAD
202	ACTING MEDICAL DIRECTOR
203	ADDITIONAL RESPONSIBILITIES
204	AMERICAN MEDICAL ASSOCIATION BOARD CERT 8.25%
205	AMERICAN MEDICAL ASSOCIATION BOARD CERT 5.50%
209	MANPOWER SHORTAGE RANGE
210	MEDICAL DIRECTOR'S BONUS - 2.75
211	MEDICAL DIRECTOR'S BONUS - 5.50%
212	MEDICAL DIRECTOR'S BONUS - 8.25%
214	OUT OF CLASS BONUS
215	POST BONUS _ ADVANCE/EXECUTIVE
217	POST BONUS - INTERMEDIATE
219	SUPERIOR SUBORDINATE PAY
220	WATCHMAN - CUSTODIAN
221	WELFARE RECIPIENT SUPERVISOR
222	OUT OF CLASS BONUS SCHEDULE/LEVEL/PERCENT

223 TEMPORARY CLERICAL & OFFICE SERVICES EMPLOYEES
224 PBP NON-BASE MERIT SALARY ADJUSTMENT
225 EXECUTIVE SECRETARY ADDED SALARY SCHEDULES
227 PBP TO SCHEDULE SALARY ADJUSTMENT
228 ADDITIONAL RESPONSIBILITIES – REPRESENTED
229 TEMPORARY SPECIAL MAP ACHIEVEMENT – FLAT
230 TEMPORARY SPECIAL MAP ACHIEVEMENT – PERCENT
231 TEMPORARY ASSIGNMENT MAP EMPLOYEE – FLAT
240 AGRICULTURAL INSPECTOR BONUS
243 CAREER DEVELOPMENT INTERN BONUS
248 REGIONAL PLANNING AICP CERTIFICATION BONUS
249 AGRICULTURE INSPECTORS AID ROVER BONUS
250 ACCOUNTING CERTIFICATE
252 6TH AND 7TH STEP FINANCIAL SPECIALIST
256 ANIMAL CONTROL MGR-BOARD LIAISON BONUS
257 HALF STEP-01
258 HALF STEP-02
263 AUDITOR-CONTROLLER MERIT - ONE SCHEDULE
264 AUDITOR-CONTROLLER MERIT - TWO SCHEDULES
265 AUDITOR-CONTROLLER MERIT - THREE SCHEDULES
266 AUDITOR-CONTROLLER MERIT - FOUR SCHEDULES
267 AUDITOR-CONTROLLER MERIT - FIVE SCHEDULES
268 AUDITOR-CONTROLLER MERIT - SIX SCHEDULES
270 BOARD OF SUPERVISOR SPECIAL ASSIGNMENT

271 ASSESSMENT APPEALS BOARD ASSIGNMENT
272 HEAD BOARD SPECIALIST ADDITIONAL STEPS
273 MAPP TIER II STEP 13
274 MAPP TIER II STEP 14
275 MAPP TIER II STEP 15
276 MAPP TIER II STEP 16
277 MAPP TIER II STEP 17
278 MAPP TIER II STEP 18
281 MAPP TO SCHEDULE FLAT AMOUNT
282 MAPP TO SCHEDULE PERCENTAGE
283 PERM PHYSICIAN TRANSITION RATE – PERCENT
285 COURT CLERK - GREATER SKILLS
291 INTERGOVERNMENTAL RELATIONS
293 LEGISLATIVE REPRESENTATIVE-CAO
295 MANAGEMENT TRAINEE
300 CURATOR BONUS
310 LEGISLATIVE ADVOCATE - COUNTY COUNSEL
320 ACCOUNTING CERTIFICATE - DA
321 DISTRICT ATTORNEY - OUT OF CLASS BONUS
322 RECLASSIFIED INVESTIGATOR
323 ANTELOPE VALLEY ASSIGN. 30 MILES FROM RESIDENCE
332 JOURNEY EMPLOYEES BONUS
334 CUSTODY ASSISTANT ACADEMY DRILL INSTRUCTOR
338 ELEVATOR ADJUSTOR

340 A OR B MOTOR VEHICLE LICENSE BONUS
347 WELLNESS/FITNESS FOR LIFE BONUS – 1%
348 WELLNESS/FITNESS FOR LIFE BONUS – 2%
349 WELLNESS/FITNESS FOR LIFE BONUS
356 FIRE SAFETY PERSONNEL BONUS
357 HELICOPTER INSPECTION LICENSE
358 TEMPORARY PROMOTION BONUS
361 TEMPORARY PROMOTION BONUS - NON SCHEDULE
367 MEDICAL STAFF CREDENTIALING ASSIGNMENT BONUS
368 RN ASSIGNED TO SHERIFFS DEPT
369 RN ADVANCED EDUCATIONAL DEGREE BONUS
370 CLINIC NURSE - STAND BY
371 CLINICAL INSTRUCTOR - GENERAL
372 CLINICAL INSTRUCTOR - LAC+USC MEDICAL CENTER
373 EMERG MEDICINE - BOARD CERTIFICATION
374 EMERG MEDICINE - BOARD CERT
375 EMERG MEDICINE - BOARD CERTIFICATION 8.25%
376 HIGH DESERT HOSPITAL - PHYSICIAN BONUS
377 JOURNEY EMPLOYEES BONUS
379 SUPERVISING NURSE - ICU
380 SUPVG RAD TECHN - DIAGNOSTIC ULTRASOUND
381 DENTAL PROFESSIONALS BOARD CERTIFICATION BONUS
383 VETERINARY MEDICINE- BOARD CERTIFICATION
384 HIGH DESERT HEALTH ASSIGNMENT BONUS

- 385 PSYCHIATRY SPECIALTY BONUS
- 386 PHYSICIAN SPECIALTY BONUS
- 387 PHARMACIST SPECIALTY ASSIGNMENTS
- 388 SHERIFF DETENTION FACILITY ASSIGNMENT BONUS
- 389 MENTAL HEALTH PSYCHIATRIST BOARD CERTIFICATION – MORE THAN ONE SPECIALTY
- 392 LIBRARIAN BONUS
- 395 PHYSICIAN SPECIALTY BONUS - 5.75%
- 396 PHYSICIAN ADDITIONAL COMPENSATION
- 397 PHYSICIAN FORENSIC PATHOLOGY BONUS
- 398 HOSPITAL ADMINISTRATOR - ADDITIONAL COMPENSATION
- 400 DEPUTY COURT ADMINISTRATOR - OPINION/ADVISOR
- 401 DEPUTY MARSHALL - LEVEL I BONUS
- 402 DEPUTY MARSHALL - LEVEL II BONUS
- 403 DEPUTY MARSHALL TRAINEE
- 404 ELECTRONIC RECORDING EQUIPMENT
- 405 MARSHALL SUPERVISING BONUS
- 406 DEPUTY MARSHAL SPECIAL TRAINING - 6TH STEP
- 407 SKILL & RESPONSIBILITY BONUS
- 408 DEPUTY CLERK III OUT OF CLASS BONUS
- 409 STENOGRAPHIC SKILLS
- 410 SUPERVISING DEPUTY CLERK
- 411 ADVISOR-COURT ADMINISTRATOR AND JUDGES
- 412 NIGHT SHIFT AND WEEKEND BONUS

413 DEPUTY CLERK IV - GREATER SKILLS
414 RECORDING EQUIPMENT-DEPUTY CLERK IV M.C.
430 ASST. DIRECTOR - PUBLIC SOCIAL SERVICES
432 DEPUTY DISTRICT DIRECTOR TRAINEE
441 CATALINA ISLAND LIVING - SHERIFF
450 SHERIFF OUT OF CLASS BONUS
453 SERGEANT-AT-ARMS BOARD OF SUPERVISOR
456 TRAINING OFFC/INVESTIGATOR/K-9 BONUS
458 ACTING CAPACITY BONUS
461 SHERIFF BUSINESS MACHINE TECHNICIAN
464 STATE OF CALIF STRUCTURAL ENGINEER LICENSE BONUS
465 REHABILITATION INSPECTOR-PUBLIC WORKS
468 LICENSED LAND SURVEYOR BONUS
469 LICENSED REGISTERED TRAFFIC ENGINEER BONUS
470 BUSINESS LICENSE LIAISON
475 CERTIFICATION BONUS - LACERA
480 SUPERIOR COURT CLERK BONUS
481 COURT REPORTERS REALTIME CERTIFICATION
482 JUDICIAL ASSISTANT BONUS
483 REALTIME WRITING BONUS
485 SUP CRT EXEC OFFICER ADDITIONAL COMPENSATION
493 SENIOR PROBATION DIRECTOR-CENTRAL JUVENILE HALL
494 SENIOR PROB DIR-LOS PADRINOS/SAN FERNANDO JUV
HALL

495 PROBATION DIRECTOR-ADMIN RESP./FOOTHILL JUV AREA
498 PROBATION DIRECTOR-CHALLENGER YOUTH CENTER
501 BOARD OF RETIREMENT CASE REVIEW
503 UNIFORM ALLOWANCE
504 NIGHT SHIFT DIFFERENTIAL
505 CORONER'S INQUEST REPORTER
506 ALLOWANCE IN LIEU OF VEHICLE USE
507 CO-GENERATION MAINTENANCE
508 HENNINGER FLATS WATCHMAN
509 FREEZER WORK
510 DEPARTMENT HEAD MERIT
511 BOARD OF SUPERVISORS PERFORMANCE LUMP SUM
512 FIRE SUPPRESSION TRANSPORTATION TRUCK DRIVER
513 MOU LUMP SUM BONUS
514 BACKHOE OPERATOR
515 WEEKEND BONUS
516 EXPLOSIVES WORK
517 EVENING SHIFT DIFFERENTIAL
518 POWER EQUIPMENT REPAIR, SNOW CONDITIONS
519 ENGINEERING EMPLOYEES, HAZARD PAY
520 HOME CARE COMPENSATION
522 CUSTODIAN ACTING AS WATCHMAN
523 HYDROELECTRIC OPERATIONS
525 CONTRACTING & PRODUCTIVITY IMPROVE INCNTV FOR
MNGR

- 528 WEBCOM PRESS OPERATOR
- 529 POWER EQUIPMENT OPERATOR, FIRE SUPPRESSION
- 531 STANDBY
- 532 ADDITIONAL RESPONSIBILITIES AND EXCEPTIONAL PERFORMANCE
- 533 POWER SWEEPER OPERATOR IN EMERGENCY CONDITIONS
- 534 POWER PLANT RELIEF ENGINEER
- 535 CLINIC PHYSICIAN FIRST HOUR
- 536 CONSULTING SPEC, MD & MNTL HEALTH CONSLT, 1st & 5th
- 538 RN ASSIGNED AS ACTING OR RELIEF CHARGE NURSE
- 539 RN WEEKEND DIFFERENTIAL
- 540 RELIEF NURSE HOLIDAY DIFFERENTIAL
- 541 RELIEF NURSE WEEKEND DIFFERENTIAL
- 544 APPRAISERS LAUNDRY AND DRY CLEANING ALLOWANCE
- 545 HEAVY DUTY TOW TRUCK DRIVER
- 546 SLURRY SEAL TRUCK_DRIVER
- 548 LIFEGUARD PARAMEDIC - RELIEF
- 550 INCENTIVE AWARDS FOR MEDI-CAL REIMBRMNTS/ HEALTH SR
- 551 GROUP INCENTIVE AWARD, TREASURER TAX COLLECTOR
- 552 STANDBY - EMERGENCY ROLL OUT PROGRAM
- 553 PIONEER EXCAVTN, TUNNEL OPERATNS, FIRE SUPP, SNOW
- 554 PIONEER EXCAVTN, TUNNEL OPERATNS, FIRE SUPP, SNOW

555 SCAFFOLD OR SWING STAGE, 30 FEET ABOVE GRADE
556 HIGH SCALE AND RIGGING OPERATIONS, GENERAL
557 EVENING SHIFT, MED TECH
558 NIGHT SHIFT, MED TECH
565 PARAMEDIC RECERTIFICATION BONUS
565A PARAMEDIC RECERTIFICATION BONUS-ELIGIBILITY INDICATOR
567 DEPUTY SHERIFF RESERVE ANNUAL COMPENSATION
568 ASSESMENT APPEALS FULL DAY INCREMENT
570 HOME CARE PROGRAM STANDYBY
571 CHILDREN'S SOCIAL WORKERS LICENSURE SUPERVISION
572 MOU LUMP SUM BONUS
574 STANDBY - INS WITNESS PROGRAM
575 WASTEWATER PLANT RELIEF BONUS
576 SOLO DAILY EARNINGS
577 INTERPRETER HALF DAY BONUS - SUP CT
578 ER ATTENDING PHYSICIAN - DAY RATE
579 ER ATTENDING PHY/-WKDY EVE/WKND HOLIDAY
580 ER ATTENDING PHY/-WKDY NITE/WKND HOLIDAY EVE NITE
581 SWIM PROFICIENCY BONUS
582 INTERPRETER REGULAR MULTIPLE LANGUAGE SAME DAY
583 INTERPRETER-HOURLY/DAILY MULT LANG SAME DAY
584 PHYSICIAN STIPENDS
600 REGISTERED NURSE MOBILE INTENSIVE CARE CERTIFICATION, SUB-ITEM D

- 602 SUPERVISING TRANSPORTATN DEPTY PERFORMING DISPATCHER DUTIES
- 603 AUTOMOTIVE SERVICE EXCELLENCE CERTIFICATE
- 604 REGISTERED NURSE MOBILE INTENSIVE CARE CERTIFICATION
- 605 CUSTODIAN FLOOR WAXING BONUS
- 606 FIRE EQUIPMENT MECHANIC ASSIGNED FIELD REPAIR DUTY
- 606A FIRE EQUIPMENT MECHANIC ASSIGNED FIELD REPAIR DUTY - ELIGIBILITY INDICATOR
- 607 SUPERVISING DEPUTY PROBATION OFFICER (SPDO) ASSIGNED ACTING DIRECTOR IN A CAMP
- 608 BILINGUAL BONUS
- 609 REGISTERED NURSE ASSIGNED TO EMERGENCY ROOM
- 610 ANTELOPE VALLEY FIREFIGHTING CREW
- 611 TREE TRIMMER SUPERVISOR, POWER OPERATIONS
- 612 SHOOTING BONUS, EXPERT
- 613 SHOOTING BONUS, DISTINGUISHED EXPERT
- 614 SHOOTING BONUS, MARKSMAN
- 615 SHOOTING BONUS, SHARPSHOOTER
- 616 ANTELOPE VALLEY QUARTERS, ON FIRE CALL
- 617 CLINIC NURSE ASSIGNED TO PROBATION CAMP
- 618 TRANSPORTATION BUS DRIVER, SHERIFF
- 619 CERTIFIED ACCESS SPECIALIST
- 620 SAN GABRIEL DAM OPERATOR
- 621 NURSE RETENTION INCENTIVE

622 ADVANCED APPRAISER CERTIFICATION

624 BILINGUAL ADDITIONAL BONUS, CHILDREN'S SOCIAL
WORK

625 AGRICULTURE INSPECTORS ASSIGNED TO
STANDARDIZATION

627 DETENTION & TRANSPORTATION EXTRA SUPERVISION
BONUS

628 BILINGUAL BONUS FOR OTHER THAN MONTHLY

628A BILINGUAL BONUS FOR OTHER THAN MONTHLY-
ELIGIBILITY INDICATOR

629 MORTUARY ATTENDANT AT LAC+USCMC

631 BILINGUAL BONUS-SUB D

632 MENTAL HEALTH WORKERS ASSIGNED SHERIFF DETENTN
FACL

633 RN ASSIGNED TO EMERGENCY ROOM SUB D

634 SUPERVISING DETENTION SERVICES OFFICER OF THE
DAY

635 TRANSPORTATION DEPUTY BUS DRIVER, PROBATION

636 INCIDENTAL EXPENSE ALLOWANCE

637 PROFESSIONAL DEVELOPMENT EXPENSES

638 PROBATION TELECOM EQUIPMENT BONUS

640 CHILDRENS SERVICES ERCP RETENTION

641 SHOOTING BONUS, EXPERT – RESERVE

642 SHOOTING BONUS, DISTINGUISHED EXPERT – RESERVE

643 SHOOTING BONUS, MARKSMAN – RESERVE

644 SHOOTING BONUS, SHARPSHOOTER – RESERVE


645 EMERGENCY ROOM BONUS/PAT FIN SVCS WKR/PAT RES
WKR

646 EMERGENCY ROLL OUT PROGRAM & SHIFT BONUS
647 BILINGUAL ADDITIONAL BONUS, PSYCH SOCIAL WORK
648 DEFIBRILLATION AIRWAY BONUS
649 MAMMOGRAPHY BONUS
690 CELLULAR PHONE STIPEND - VOICEMAIL
691 CELLULAR PHONE STIPEND - DATA ONLY
692 CELLULAR PHONE STIPEND - VOICE AND DATA
694 CIVIC CENTER COMMUTER ALLOWANCE
695 DEPARTMENT HEAD TRANSPORTATION ALLOWANCE
696 DEPARTMENT HEAD TRAFFIC MITIGATION ALLOWANCE
700 PENSIONABLE OVERTIME
730 PREMIUM OVERTIME - SYSTEM PENSIONABLE
PF004 MEGAFLEX PENSIONABLE CONTRIBUTION
PF007 FLEX PENSIONABLE CONTRIBUTION
PF010 CHOICES PENSIONABLE CONTRIBUTION
PF013 OPTIONS PENSIONABLE CONTRIBUTION
PK003 NON-ELECTIVE LEAVE
PK011 SICK - 100%
PK012 HOLIDAY
PK021 VACATION
PK030 SPECIAL PAID LEAVE
PK031 APPRAISERS LEAVE
PK032 INTERN/RESIDENT LEAVE

PK113	SICK PRE-71
PKP11	SICK LEAVE BUYBACK 100%
PKP21	VACATION BUYBACK
PP046	EMPLOYEE SUGGESTION
NONE	REGISTERED NURSE ASSIGNED TO CRITICAL CARE UNITS
NONE	FIRE SUPPRESSION CAMP ASSIGNMENT – PREMIUM
NONE	FIRE SUPPRESSION CAMP ASSIGNMENT – COMPENSATORY TIME EARNED
NONE	POST, SUPERVISORY BONUS
OP100	CORRECTIVE PAYMENT, REINSTATED EMPLOYEE
OP101	CORRECTIVE PAYMENT, ADMINISTRATIVE ERROR

November 22, 2017

TO: Each Member
Board of Retirement

FROM: Ricki Contreras, Division Manager
Disability Retirement Services 

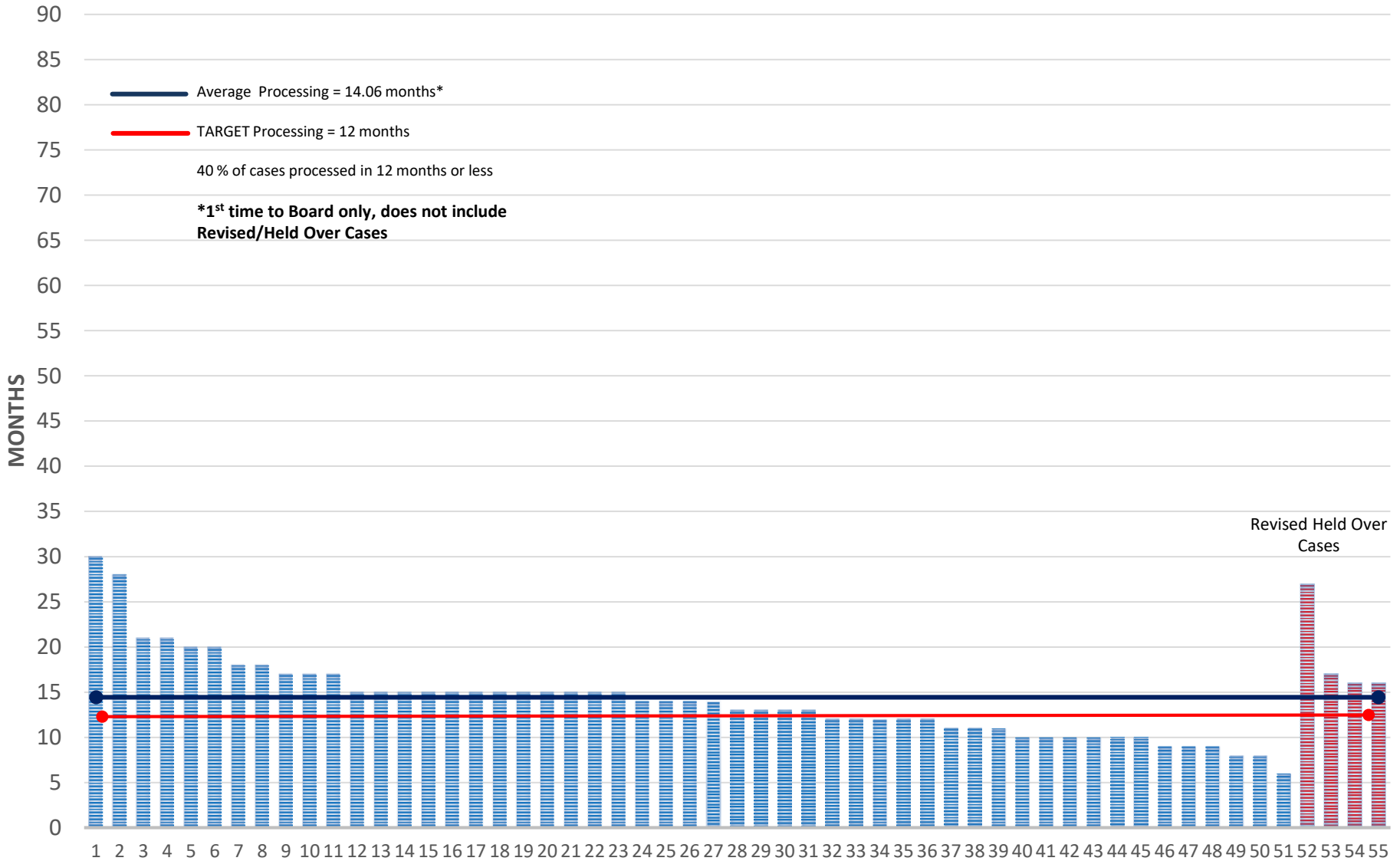
FOR: December 14, 2017 Board of Retirement Meeting

SUBJECT: **Application Processing Time Snapshot Reports**

The following chart shows the total processing time from receipt of the application to the first Board action for all cases on the December 14, 2017 Disability Retirement Applications Agenda.

Consent & Non-Consent Calendar				
Number of Applications	51			
Average Processing Time (in Months)	14.06			
Revised/Held Over Calendar				
Number of Applications	4			
Average Processing Time (in Months)	Case 1 27	Case 2 17	Case 3 16	Case 4 16
Total Average Processing Time for Revised/Held Over Calendar	19.00			

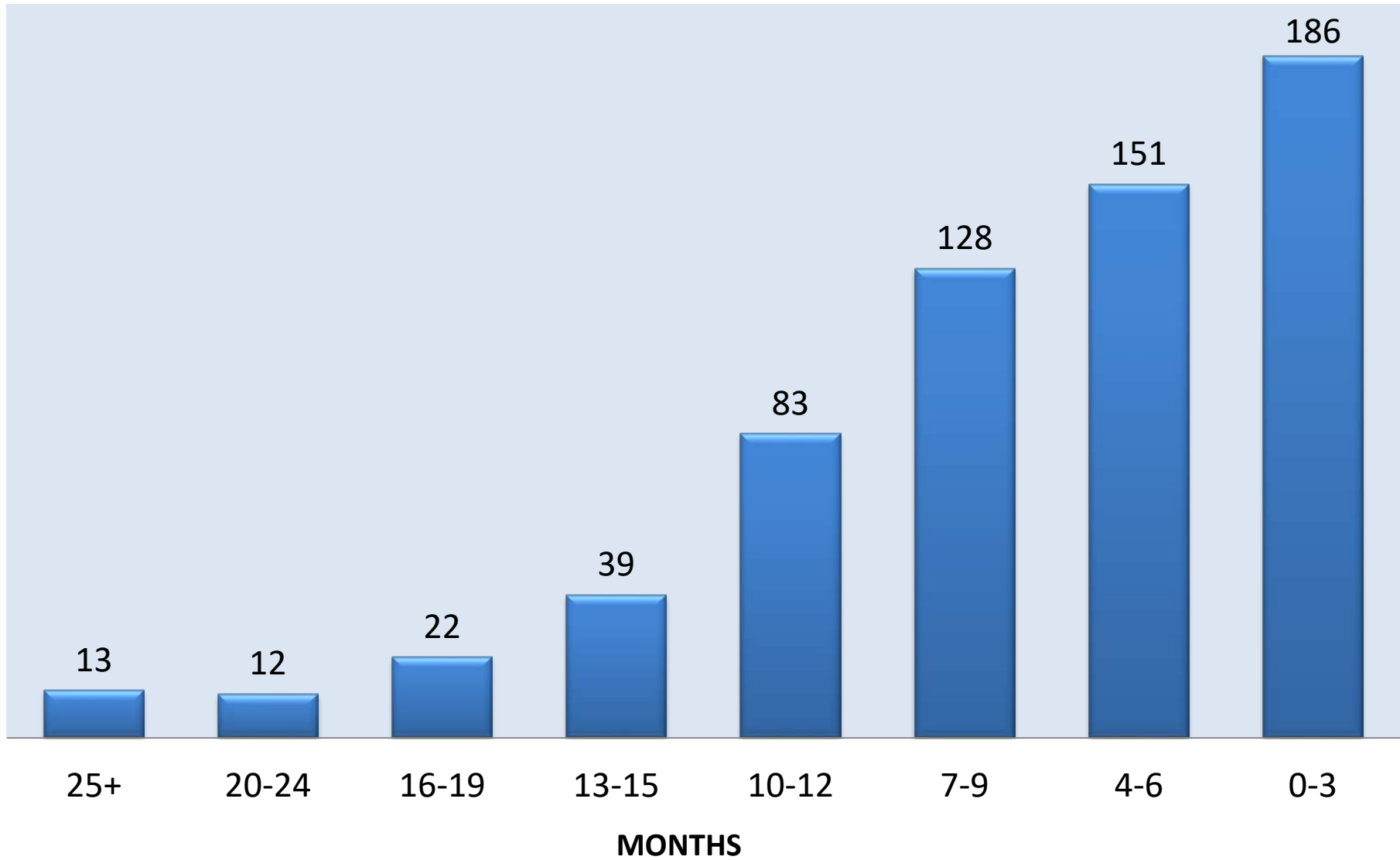
CASE PROCESSING TIME



Revised Held Over Cases

PENDING APPLICATIONS/TIME INTERVALS

NUMBER OF APPLICATIONS



November 27, 2017

FOR INFORMATION ONLY

TO: Each Member
Board of Retirement

FROM: Barry W. Lew 
Legislative Affairs Officer

FOR: December 14, 2017 Board of Retirement Meeting

SUBJECT: **Update on SACRS 2018 Legislative Platform**

During its Business Meeting at the Fall Conference on November 17, 2017, the membership of the State Association of County Retirement Systems (SACRS) voted on whether to sponsor legislation for the 2018 legislative year. Three proposals were submitted for consideration. The SACRS Legislative Committee reviewed the proposals in September 2017 and voted to recommend whether SACRS should sponsor or decline to sponsor the proposals. The proposals were subsequently forwarded to each retirement system for consideration and to provide voting directions for its voting delegate.

I. Providing Definition of “Surviving Spouse” for Eligibility for Survivor Continuances

- SACRS Position: Sponsor.
- BOR Voting Direction: Vote NO.
- IBLC Recommendation: Vote NO.
- Staff Recommendation: Vote NO.
- SACRS Legislative Committee Recommendation: Sponsor.

The County Employees Retirement Law of 1937 (CERL) provides for survivor benefits to be paid upon the death of a member who retired for service or disability. A former spouse is not considered a surviving spouse after a dissolution of marriage. However, CERL does not define whether a legally separated spouse is considered a surviving spouse. Although the treatment of legally separated spouses as surviving spouses is inconsistent among the CERL retirement systems, the case of *Irvin v. Contra Costa County Employees’ Retirement Assn.* (2017) 13 Cal.App.5th 162 [220 Cal.Rptr.3d 510] found that the plain meaning of “surviving spouse” currently in CERL includes legally separated spouses. The Contra Costa County Employees’ Retirement Association appealed the decision; however, the petition for review was denied, and the *Irvin* decision stands. LACERA’s treatment of legally separated spouses is consistent with the *Irvin* decision.

The SACRS membership voted to support sponsorship of legislation to add a definition of “surviving spouse” in CERL, so that it does not include legally separated spouses. It appears that most of the member systems that voted to support sponsorship were also systems that did not treat legally separated spouses as surviving spouses. Staff will monitor the introduction of the bill in 2018 and provide an analysis for your Board to adopt a position.

II. Time Limits of Filing Application for Disability Retirement

- SACRS Position: Decline to Sponsor.
- BOR Voting Direction: Vote NO.
- IBLC Recommendation: Vote NO.
- Staff Recommendation: Vote NO.
- SACRS Legislative Committee Recommendation: Decline to Sponsor.

The Ventura County Employees’ Retirement Association (VCERA) believes that a long period between the discontinuance of service and the filing of a disability application makes it more difficult to investigate the application. For example, VCERA observes that a member in the San Bernardino County Employees’ Retirement Association waited 8 years after discontinuance of service before filing a disability application. VCERA proposes that during the period after discontinuance of service, while the member is continuously incapacitated, the application is filed within four months of when the member is or should be able to ascertain the permanency of the incapacity.

The SACRS membership voted not to sponsor legislation based on VCERA’s proposal.

III. Trustee Authority over Retirement Office Executive Staff

- SACRS Position: N/A
- BOR Voting Direction: Vote NO.
- IBLC Recommendation: Vote NO.
- Staff Recommendation: Vote NO.
- SACRS Legislative Committee Recommendation: Decline to Sponsor.

In certain counties, the board of retirement (or both the board of retirement and board of investment) may elect to appoint assistant administrators and chief investment officers who are not subject to county charter, civil service, or merit system rules. The assistant administrators and chief investment officers so appointed serve at the pleasure of and may be dismissed at will of the appointing board or boards. These provisions currently apply to the Counties of San Diego, Sacramento, Kern, San Joaquin, and Marin. The

provisions currently do not apply to the County of Tulare, and the Tulare County Employees' Retirement Association (TCERA) proposes to make the provisions applicable to all counties with retirement systems operating under CERL.

TCERA withdrew its proposal for consideration at the SACRS Business Meeting, and the SACRS membership did not vote on the proposal.

Reviewed and Approved:



Steven P. Rice, Chief Counsel

Attachments

Attachment 1—Providing Definition of “Surviving Spouse” for Eligibility for Survivor Continuances

Attachment 2— Time Limits of Filing Application for Disability Retirement

Attachment 3— Trustee Authority over Retirement Office Executive Staff

cc: Robert Hill
James Brekk
JJ Popowich
Bernie Buenaflor
Steven Rice
Vincent Lim
Ricki Contreras
Frank Boyd
Fern Billingsy
Jill Rawal
Allison Barrett
Eugenia Der
Jason Waller
Joe Ackler, Ackler & Associates

**2018 SACRS LEGISLATIVE PLATFORM WORKSHEET
PLEASE COMPLETE AND RETURN BY SEPTEMBER 5, 2017**

Title of Issue: Providing definition of “Surviving Spouse” for eligibility for survivor continuances.

Association: Ventura County Employees’ Retirement Association

Contact Person: Linda Webb, Retirement Administrator

Phone #: (805) 339-4262

Fax #: (805) 339-2502

Please answer the following questions as fully as possible:

1. Description of issue.

Under the CERL, a member may elect among various payment options at time of retirement. An unmodified allowance pays the highest monthly benefit and a 60% continuance to an eligible surviving spouse or, if none, to a minor child or children. (Govt. Code §§ 31760.1, 31760.2.) The survivor continuance is 100% in cases where the member is retired for service-connected disability. (Govt. Code § 31787.) Under the unmodified allowance, Government Code section 31760.1 provides for a continuance to a surviving spouse who was married to the member for at least one year prior to retirement, and Government Code section 31760.2, an optional provision made applicable by board resolution, allows for a survivor continuance to be paid to a post-retirement spouse, provided the spouse is at least 55 years of age and was married to the member for at least two years prior to the member’s death.

The term “surviving spouse” is not defined by the CERL. Case law is clear that following a judgment of dissolution of marriage, a former spouse is not a “surviving spouse” under CERL, though the former spouse may be awarded his/her community property share of the member’s benefits and also may continue to receive his/her community property share of any survivor continuance paid to the member’s survivor(s). (See *In Re Marriage of Carnall* (1989) 216 Cal.App.3d 1010; *In Re Marriage of Cramer* (1993) 20 Cal.App.4th 73.) However, published case law did not address the rights of legally-separated spouses prior to the recent issuance of the opinion in *Irvin v. Contra Costa County Employees’ Retirement Association*, First Appellate District, Div. 1, A149642 (the “Opinion”). The Opinion concludes that a legally separated spouse qualifies for a survivor continuance as the member’s “surviving spouse”. This Opinion is contrary to the practices of at least eight CERL systems and three prior decisions issued by the superior court in Santa Barbara, Contra Costa and Ventura counties. CCCERA has filed a petition for Supreme Court review, and four systems, so far, have jointly submitted a letter in support of review. (Ventura, Santa Barbara, San Bernardino and Tulare). The Opinion also impacts account divisions under Article 8.4 of the CERL. Prior to the Opinion, none of the systems that operate under Article 8.4 treat a legally separated spouse as the member’s surviving spouse, primarily because a survivor continuance is not among the benefits payable to the nonmember and any benefits not awarded to the spouse are the sole and separate property of the member’s.

1. Recommended solution.

Add a provision to CERL to define “Surviving Spouse” so as to include only a spouse who is legally married to the member, is neither divorced nor legally separated from the member, has lived with the member continuously from the date of marriage to the date of the member’s death and who meets all other requirements of CERL pertain to the length of the marriage and the spouse’s age at the time of the member’s death. (A similar provision appears in 38 U.S.C. section 101(3), governing a surviving spouse’s rights to veteran’s benefits.¹)

2. Specific language that you would like changed in, or added to, ’37 Act Law, and suggested code section numbers.

Section 31480.1 is added to the Government Code to read:

31480.1. “Surviving spouse”, as used in this Chapter, means a person who has legally married the member, is neither divorced nor legally separated from the member, is the spouse of the member at the time of the member’s death, has lived with the member from the date of marriage to the date of the member’s death, has not remarried or lived with another person and held himself or herself out publicly as the spouse of that person, and who meets all other requirements of this Chapter pertaining to the length of the marriage, and the person’s age at the time of the member’s death.

2. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?

This issue affects all CERL systems.

3. Do you anticipate that the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?

According to informal survey responses, there are currently approximately eight CERL systems whose practices are consistent with the proposed legislation. There are approximately six CERL systems that currently treat legally separated spouses as “surviving spouses” eligible for survivor continuances, and it is unknown whether these systems would oppose the proposed legislation.

4. Who will support or oppose this proposed change in the law?

Counties may support this proposed change, as it would result in cost savings to plan sponsors. Under the CERL’s funding mechanism, the survivor continuance is not included in the normal cost. The normal cost is based on the age of the member alone. The plan sponsors absorb any

¹ 38 USC 101(3) provides: “The term ‘surviving spouse’ means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death, and who lived with the veteran continuously from the date of marriage to the date of the veteran’s death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.” Note that subsequent to the Defense of Marriage Act, this statute may not be used to deny benefits to same sex spouses who otherwise meet the statutory criteria for “surviving spouse.” See *Cooper-Harris v. United States of America* (2013) 965 F.Supp.2d 1139.

additional costs of providing a survivor continuance under the unmodified option. In opposition to the proposed change may be the family law and QDRO attorneys.

5. Who will be available from your association to testify before the Legislature?

Retirement Administrator, Linda Webb, and General Counsel, Lori Nemiroff.

Email or mail your legislative proposals to:

Mike Robson and Trent Smith
Edelstein, Gilbert, Robson, & Smith LLC
1127 11th Street, Suite 1030
Sacramento, CA 95814

Email to both:

Mike@EGRSlobby.com

Trent@EGRSlobby.com

**2018 SACRS LEGISLATIVE PLATFORM WORKSHEET
PLEASE COMPLETE AND RETURN BY SEPTEMBER 5, 2017**

Title of Issue: Time Limits for Filing Application for Disability Retirement

Association: VCERA

Contact Person: Linda Webb

Phone #: (805) 339-4262

Fax #: (805) 339-2502

Please answer the following questions as fully as possible:

1. Description of issue.

Under GC 31722, an application for disability retirement must generally be filed within four months after discontinuance of service (unless a presumption applies), but may be filed at *any time* after discontinuance of service provided that from the date of discontinuance of service to the time of the application, the member is continuously incapacitated. As observed in the recent case of *Flethez v. San Bernardino County Retirement System* (2017) 2 Cal.5th 630, a member waited 8 years after discontinuance of service to file his application for disability retirement. A long period of delay between discontinuance of service and date of filing makes it more difficult to investigate the application.

2. Recommended solution.

Amend GC 31722 to require that an application for disability retirement be filed within four months after the applicant knows or should know that his/her illness or injury has become permanent.

3. Specific language that you would like changed in, or added to, '37 Act Law, and suggested code section numbers.

Amend GC 31722 to state: "The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, from the date of discontinuance of service to the time of the application, he or she is continuously physically or mentally incapacitated to perform his or her duties **and files the application within four months of when he or she is or should be able to ascertain the permanency of the incapacity.**"

4. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?

This issue affects all CERL systems.

5. Do you anticipate that the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?

No

6. Who will support or oppose this proposed change in the law?

Support: Plan sponsors; taxpayers. Oppose: Labor Unions

7. Who will be available from your association to testify before the Legislature?

Linda Webb, Retirement Administrator, VCERA

Lori Nemiroff, General Counsel, VCERA

Back-up: Art Goulet, Trustee

Email or mail your legislative proposals to:

Mike Robson and Trent Smith
Edelstein, Gilbert, Robson, & Smith LLC
1127 11th Street, Suite 1030
Sacramento, CA 95814

Email to both:

Mike@EGRSlobby.com

Trent@EGRSlobby.com

2018 SACRS LEGISLATIVE PLATFORM WORKSHEET

Title of Issue: Trustee Authority Over Retirement Office Executive Staff

Association: Tulare CERA

Contact Person: Dave Kehler

Phone #: 559.713.2904

Fax #: 559.730.2631

Please answer the following questions as fully as possible:

1. Description of issue.

As currently written, California Government Code Section 31522.3 applies only to those individual counties (San Diego, Sacramento, Kern, San Joaquin, Marin) that have adopted the provisions through the legislative process. TCERA proposes that SACRS sponsors legislation that would make the provision of Section 31522.3 applicable to all '37 Act counties.

As revised, Section 31522.3 would clarify the hiring, direction, and dismissal power of the Board of Retirement over executive staff (i.e. the Assistant Administrator/CEO and CIO) for those plans that have such employee staff members. (Section 31522.2 already gives the Board such authority over the plan Administrator/CEO.) TCERA is of the opinion that it often has been presumed by all involved that the Retirement Board has had such authority over all of the Retirement Plan's executive level positions. The proposed revision to Section 31522.3 would align that presumption with the actual language of the law.

2. Recommended solution.

Remove subparagraph (c) from the language of Section 31522.3 so that the section can be made applicable to all systems covered by the CERL.

3. Specific language that you would like changed in, or added to, '37 Act Law, and suggested code section numbers.

“(a) In a county in which the board of retirement or both the board of retirement and the board of investment have appointed personnel pursuant to Section 31522.1, the respective board or boards may elect to appoint assistant administrators and chief investment officers as provided for in this section. The positions of the assistant administrators and chief investment officers designated by the retirement board shall not be subject to county charter, civil service, or merit system rules. The persons so appointed shall be county employees and shall be included in the salary ordinance or salary resolution adopted by the board of supervisors for the compensation of county officers and employees. The assistant administrators and

chief investment officers so appointed shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of, the appointing board or boards. Specific charges, a statement of reasons, or good cause shall not be required as a basis for dismissal of the assistant administrators and chief investment officers by the appointing board or boards.

(b) This section shall not apply to any person who was an assistant administrator or a chief investment officer and was included in the county civil service or was subject to merit system rules on December 31, 1996."

4. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?

The language of Government Code Section 31522.3 – and its current restrictions - is of interest to all '37 Act plans that have Assistant Retirement Administrator/CEO and CIO positions – not just to Tulare.

5. Do you anticipate that the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?

No.

6. Who will support or oppose this proposed change in the law?

We would not expect opposition to this proposal as the Section is already in place for some CERL systems. The proposed revision seeks to clarify the authority Board of Retirement have over the hiring, direction, and dismissal powers of the Board over executive staff of the Retirement plan.

7. Who will be available from your association to testify before the Legislature?

Dave Kehler, TCERA Retirement Administrator.

Email or mail your legislative proposals to:

Mike Robson and Trent Smith
Edelstein, Gilbert, Robson, & Smith LLC
1127 11th Street, Suite 1030
Sacramento, CA 95814

Email to both:

Mike@EGRSlobby.com

Trent@EGRSlobby.com



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**