Attachment A

STATE OF CALIFORNIA
BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

DELEGATION RESOLUTION

No. BD-94-04 (Rev.)

Subject: Finance Committee – Discharge of Accountability of Uncollectible Debt

WHEREAS, In accordance with Government Code sections 20103, 9353, 75005, and 50953, the Board of Administration of the California Public Employees' Retirement System (hereafter "the Board") is charged with the administration and management of the: Public Employees' Retirement System; Legislators' Retirement System; and, Judges' Retirement System (hereafter collectively "the System").

WHEREAS, In accordance with Article XVI, section 17(a) of the California Constitution, System assets are held in trust and must be used for the exclusive purposes of providing benefits to CalPERS members and their beneficiaries and defraying reasonable expenses of administering the System. Pursuant to this same section, the Board must discharge its duties with respect to the System "solely in the interest of, and for the exclusive purposes of providing benefits to participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system." However, the Board's duty to its participants and their beneficiaries takes precedence over any other duty. (Cal. Const. art. XVI, sec. 17(b).)

WHEREAS, California Government Code 13940 et seq, provides generally for the "discharge from accountability" of state agencies charged by law with the collection of money owing to the State of California for any reason. Specifically, "money owing to the State for any reason, which is due and payable, may be discharged by the Board [of Control] from accountability for the collection of the . . . money if it is uncollectible or the amount does not justify the cost of collection."

WHEREAS, On November 3, 1992, the people of the State of California passed Proposition 162, which amended California Constitution article XVI, section 17, to expressly provide that the CalPERS Board of Administration has plenary authority and fiduciary responsibility for, among other things, administration of the System.

WHEREAS, California Constitution, article XVI, section 17, provides that the Board has sole and exclusive responsibility to administer the System in a manner that will assure prompt delivery of benefits and related services to participants and their beneficiaries.

WHEREAS, California Constitution, article XVI, section 17, specifies that the Board has sole and exclusive responsibility over the System's assets.

RESOLVED, (A) In accordance with its constitutionally-mandated authority, the Board shall take exclusive control over determinations regarding whether to discharge claims of the system, including overpayments and other debts.

RESOLVED, (B) CalPERS' internal policies and procedures regarding the writing-off of uncollectible overpayments, shall be reviewed and revised by the Fiscal Services Division and Divisions that originate requests for discharge of accountability, to insure consistency with the Board's fiduciary duties. The procedures shall include safeguards to insure compliance with the constitutionally-mandated standards of diligence, care, prudence, and skill. The final discharge of accountability policies and procedures will be presented to the Board for review, revision and approval.

RESOLVED, (C) In the spirit of the policies underlying Government Code sections 13940 et seq., CalPERS shall notify control agencies of the Board's action and changes in practice, and shall continue to submit documentation regarding discharged claims to oversight agencies, on an information only basis.

RESOLVED, (D) CalPERS' authority is limited by and subject to the following:

(1) The Board and its delegees must discharge their duty "solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the System", but with the duty to participants and beneficiaries taking precedence over all other duties. (Cal. Const. art. XVI, sec.17 (b).)

(2) The Board and its delegees must discharge their duties with respect to the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

RESOLVED, (E) That an annual report listing the number and dollar amount of all CalPERS' debts discharged during the year shall be provided to the Finance Committee.

RESOLVED, (F) That this Resolution shall be effective immediately upon adoption, and is cumulative to all other delegations to the Board and its delegees.

****

I hereby certify that the foregoing Resolution was adopted by the Board of Administration of the California Public Employees Retirement System, on October 19, 1994, and was amended on October 18, 2000.

_____
WILLIAM DALE CRIST, PRESIDENT
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATEMENT OF POLICY
DISCHARGE FROM ACCOUNTABILITY
[November 1, 2000]

This document is effective immediately upon adoption, and is adopted pursuant to California Government Code sections 20120 and 20121, California Constitution, article XVI, section 17, and Board Resolution BD-94-04. It supersedes all other policies concerning this subject.

The provisions of the California Constitution, Article XVI, section 17, shift authority for the oversight of CalPERS operations to the CalPERS Board, and generally removes CalPERS from the oversight and approvals contained in Government Code section 13940 et seq. As such, it is necessary to establish internal guidelines specifying approval requirements and signature authority which will serve as a replacement for the role the control agencies performed in relation to CalPERS' requests for discharge of uncollectible debt.

This policy applies to all CalPERS divisions.

Generally, under the circumstances detailed below, money owed to CalPERS that is due and payable, including, but not limited to, overpayments, contractual obligations, as well as any other debts and claims, may be discharged from accountability, if the amount is uncollectible or the amount of the debt does not justify the cost of its collection.

General guidelines for discharge of accountability approval shall be as follows:

1) All "Discharge from Accountability" requests less than $10,000, and all those that are beyond the pertinent statutes of limitation, are delegated to the appropriate CalPERS Division Chief for review and recommendation for approval or denial. The recommendation shall be sent to Fiscal Services Division for final approval.

2) All "Discharge from Accountability" requests that do not involve statutes of limitation, and are between $10,000 and $19,999 are delegated to the appropriate Assistant Executive Officer. Recommendation for discharge should originate with the appropriate Division Chief and be reviewed by Fiscal before final determination by the Assistant Executive Officer.

3) All "Discharge from Accountability" requests that do not involve statutes of limitation and which are $20,000 or more, are delegated to the Finance Committee for review and final recommendation to the Board. The Board will make the final approval or denial.

As stated above, discharges from accountability that involve debts that are beyond the statutes of limitation, are delegated to the appropriate Division Chief, no matter their dollar amount. As is deemed appropriate, Division Chiefs who believe that the relevant statute of limitation has expired shall seek approval from the Legal Office prior to approving the discharge from accountability. The rationale for the statute of limitation delegation is that debts owed that are beyond the relevant statute of limitation are not legally recoverable and no discretion for collection exists.

It is anticipated that the Finance Committee will be required to act upon discharge from accountability requests at least once a year. If the number of write-off requests, above the dollar limits indicated in this policy, warrant additional attention by the Finance Committee, CalPERS staff will notify the Finance Committee of the need for additional action. Fiscal Services will submit an annual report to the Finance Committee detailing the number and dollar amount of all debts discharged during the last year.

To comply with the constitutionally-mandated standards of diligence, care, prudence, and skill, strong internal controls and thorough review shall be part of the internal process. Upon adoption of this policy by the Board, specific procedures for processing requests for discharge from accountability will be developed and submitted to the Board for review and approval.