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MENDOCINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION
625-B KINGS COURT
UKIAH, CALIFORNIA 95482-5027

Date: October 15, 2014
To: Board of Retirement
From: Jim Andersen, Interim Retirement Administrator *JA*
Subject: Discussion and Possible Action to Adopt a Resolution and Model Regulations Consistent with MCERA's Voluntary Correction Program

Background

Attached is a transmittal letter from Judith Boyette, Hanson Bridgett, describing the resolution and six (6) model regulations for adoption by the Board. The model regulations were included in the Voluntary Correction Plan (VCP) submitted by MCERA and approved by the Internal Revenue Service (IRS). To complete the process, MCERA must achieve compliance with the VCP by adopting the model regulations and ensuring MCERA's practices, forms, etc., are consistent with the new regulations, or policies.

In addition, although the Board already adopted a resolution and model regulation for a 401(h) account on October 19, 2011, staff has attached that information. Finally, per the Board's request, accompanying that information are two (2) schematics displaying how sponsor contributions for retiree health care historically flowed through MCERA compared to how they should have been handled under the Internal Revenue Code.

Discussion

As noted, the model regulations are consistent with those included in the VCP, and are recommended to be adopted intact. Of note, however, is the regulation establishing normal retirement ages of 50 and 62 for safety and regular members, respectively. Per Hanson Bridgett, the normal retirement ages are for use only in determining the rule for a bona fide separation of service before returning to work, and will not impact any other retirement calculations or processes. The Board may wish to revisit normal retirement ages in the future, with consultation from its actuary, however, the ages included in the model regulations are known to be acceptable to the IRS and will ensure VCP compliance at this time.

Recommended Motion and Action

1. Adopt the Resolution Adopting Tax Compliance Regulations for the Mendocino County Employees' Retirement Association; and
2. Direct staff to confer with Hanson Bridgett to ensure all MCERA practices and forms are consistent with the model regulations prior to their effective date.

JA
Attachments

Memorandum

TO: Jim Andersen
Mendocino County Employees' Retirement Association

FROM: Judith W. Boyette

DATE: September 9, 2014

RE: **Adoption of Regulations Required By Determination Letter and Voluntary Correction Program Process**

As you know, in 2011, MCERA filed a determination letter application and a related voluntary correction program ("VCP") filing with the IRS. MCERA received a favorable determination letter and VCP compliance statement from the IRS dated January 29, 2014. The protection provided by those IRS responses is conditioned on MCERA adopting the model regulations attached to this memorandum and described below. In addition, as a condition of the protection remaining in effect until the next IRS filing, MCERA must keep up to date on required IRS changes on an annual basis. As described below, by adoption of these regulations, MCERA will have complied with all of the changes since the last filing that currently need to be adopted.

VCP Compliance Statement Maintaining MCERA Tax-Qualification and Avoiding Penalties Conditioned on Adoption of Model Regulations Submitted to IRS

Receipt of the favorable determination letter and the VCP compliance statement by MCERA represents an important step in maintaining the tax-favored status of the retirement system. If the IRS audits MCERA, the determination letter can be used to ensure that the IRS would not attempt to challenge the qualification of MCERA in form to a retroactive date. The determination letter addresses only the IRS's view that the plan document meets the qualification requirements. It does not protect against operational failures. That is why the VCP process was also utilized to correct any operational errors that MCERA found in the thorough review process prior to the filing with the IRS in 2011. Together, these actions serve to help protect the qualified status of MCERA and fulfill one of the most important fiduciary duties of MCERA's Board of Retirement.

In addition, the favorable determination letter provides further help if subsequent operational failures occur for MCERA. Under the IRS Employer Plan Compliance Resolution System ("EPCRS"), MCERA is also permitted to voluntarily correct certain compliance failures without formally undertaking a VCP submission. This portion of the EPCRS is known as the self-correction program ("SCP"). The SCP does not require a formal submission to the IRS and entails no fees or sanctions. However, to take advantage of the SCP, MCERA must have a current favorable determination letter. Given the complexity of the County Employees' Retirement Law of 1937 (the "CERL"), it would be impossible to ensure no operational errors. Therefore, having the ability to use self-correction is an important tool to protect MCERA and its Board of Retirement from future liability.

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As is described in the IRS documents received, in order to rely on the determination letter and the VCP compliance statement, MCERA must complete the corrections required by the IRS. These corrections include changes to be made to the CERL that have been approved in legislation that is awaiting the Governor's approval. In addition, MCERA (along with the other CERL systems who received these favorable IRS responses) is required to adopt the model tax compliance regulations presented to the IRS as part of the filing process. MCERA may also remember that the strategy used in the IRS proposal was that the lengthy technical federal tax law language requirements primarily would be contained in these model tax compliance regulations, rather than in the CERL itself. This allows for easier revision if the IRS makes technical changes to its required language in the future.

MCERA Must Adopt the Attached Six Model Tax Compliance Regulations By IRS Deadline

Under the IRS rules, MCERA has to adopt the attached model tax compliance regulations on or before the date prescribed by the IRS under Code section 401(b) regulations (called the remedial amendment period). Under the remedial amendment period requirements, a governmental plan like MCERA must adopt any amendments required by its favorable determination letter or VCP compliance statement by the 91st day after the last day of the first regular legislative session beginning more than 120 days from the date the favorable determination letter was issued. MCERA's favorable determination letter and the related VCP compliance statement were dated January 29, 2014. The next legislative session beginning more than 120-days from January 29, 2014, will begin on December 1, 2014, and end on November 30, 2016. This means that technically MCERA must adopt the attached model regulations (and have the proposed legislative changes to the CERL enacted) no later than March 1, 2017 – the 91st day after November 30, 2016. However, the next IRS filing period opens on February 1, 2015, and ends on January 31, 2016. We would recommend having the model regulations adopted and the new legislation passed when MCERA files with the IRS so that the application can indicate that those corrections have been completed.

At the time MCERA files with the IRS, in addition to having adopted the model tax regulations that were presented to the IRS previously, MCERA will need to be able to demonstrate that it has timely complied with the required law changes each year as any changes may become effective. If MCERA keeps its procedures up to date, the IRS protection of the favorable determination letter is extended. The attached model Regulations have been revised to contain the required changes since the last filing with the IRS, in addition to any other applicable law changes. For example, the attached model Regulations include changes required by the California pension reform legislation (PEPRA) that were effective January 1, 2013, and the changes required by the U.S. Supreme Court decision declaring portions of the Defense of Marriage Act (DOMA) unconstitutional (the *Windsor* case). Finally, under current IRS guidance, MCERA must adopt a normal retirement age as required by IRS guidance prior to the July 1, 2015. Adopting the attached Regulations at this time will allow MCERA to meet all of these requirements. Please note that MCERA is not required to adopt the model regulations dealing with Code section 401(h) since MCERA previously advised the IRS that it adopted the model 401(h) regulations at its October 2011 Board of Retirement meeting (regulations and minutes attached).

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Because of the various timing requirements described above, we recommend that MCERA go forward with adoption of the attached Regulations at this time with an effective date of December 31, 2014. For your convenience, a resolution and attached final versions of all of the tax compliance regulations is attached to this memorandum for presentation to the Board of Retirement at its up-coming meeting.

Attachments:

- Resolution for adoption of Tax Compliance Regulations
- Regulation for Code Section 401(a)(9) (Required Minimum Distributions)
- Regulation for Code Section 401(a)(17) (Compensation Limits)
- Regulation for Code Section 401(a)(31) and 402(c) (Rollovers)
- Regulation for Code Section 415 (Annual Additions Limits)
- Regulation for Code Section 401(a) (Distribution Limitations)
- Regulation for Code Section 401(a) (36) (Normal Retirement Age)

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF RETIREMENT
ADOPTING TAX COMPLIANCE REGULATIONS FOR THE MENDOCINO
COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

WHEREAS, the Board of Retirement for the Mendocino County Employees' Retirement Association ("MCERA") administers MCERA for the benefit of its members and their beneficiaries; and

WHEREAS, MCERA is intended to comply with the requirements of the Internal Revenue Code of 1986 (the "Code"), as amended or replaced from time to time and the regulations issued thereunder as applicable; and

WHEREAS, the Internal Revenue Service ("IRS") issued to MCERA on January 29, 2014, a favorable determination letter regarding its continued tax-qualified status and a related compliance statement under the voluntary correction program ("VCP"); and

WHEREAS, such favorable determination letter and VCP compliance statement are conditioned on the adoption of model tax compliance regulations submitted previously to the IRS by MCERA; and

WHEREAS, it is desirable that the tax-qualified status of MCERA be maintained through compliance with the IRS requirements;

THEREFORE BE IT RESOLVED, that effective as of December 31, 2014, the following regulations in the form attached hereto are adopted for MCERA:

Regulation for Code Section 401(a)(9) (Required Minimum Distributions)

Regulation for Code Section 401(a)(17) (Compensation Limits)

Regulation for Code Section 401(a)(31) and 402(c) (Rollovers)

Regulation for Code Section 415 (Annual Additions Limits)

Regulation for Code Section 401(a) (Distribution Limitations)

Regulation for Code Section 401(a) (36) (Normal Retirement Age)

Upon motion by Trustee _____, seconded by Trustee _____, the foregoing Resolution is hereby approved and adopted by the Mendocino County Board of Retirement the _____ day of _____ 2014 by the following vote:

Ayes:

Noes:

Absent:

Shari Schapmire, Chair
County Board of Retirement

Jim Andersen, Interim Retirement Mendocino
Administrator

**Mendocino County Employees' Retirement
Association**

REGULATIONS FOR IRC CODE § 401(a)(9)

REQUIRED MINIMUM DISTRIBUTION RULES

**REGULATIONS FOR IRC SECTION 401(a)(9)
MINIMUM REQUIRED DISTRIBUTIONS**

SECTION I. GENERAL RULES

A. Purpose and Effective Date

In accordance with sections 31485.14, 31525 and 31706 of the California Government Code, the regulations set forth herein are effective as of December 31, 2014 and reaffirm and clarify the existing practices of the Mendocino County Employees' Retirement Association (the "Association") with respect to the minimum distribution requirements under section 401(a)(9) of the Internal Revenue Code (the "Code").

These regulations are intended to be in accordance with the Code and the applicable Treasury regulations. To the extent there is a conflict between these regulations and the Code and Treasury regulations, the applicable federal law will govern.

The Association may establish reasonable procedures for complying with the minimum distribution requirements under section 401(a)(9) of the Code that it deems necessary or desirable to comply with applicable tax laws or for administrative purposes.

B. Reasonable Good Faith Interpretation of Code

In accordance with section 823 of the Pension Protection Act of 2006 ("PPA"), these regulations are promulgated in accordance with a reasonable good faith interpretation of section 401(a)(9) of the Code, and the Treasury regulations thereunder, as applicable to a governmental plan within the meaning of section 414(d) of the Code. For purposes of section 401(a)(9), Code means the Code and applicable Treasury regulations as they apply under a reasonable good faith interpretation of section 401(a)(9).

C. Elections Under TEFRA § 242(b)(2)

Notwithstanding the other requirements of this regulation to the contrary, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act.

Capitalized terms used in this Regulation are defined in Section VI. Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. TIME AND MANNER OF DISTRIBUTION

A. Required Beginning Date

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The Member's entire interest will be distributed, or begin to be distributed, no later than the Member's Required Beginning Date.

B. Forms of Distribution

1. Periodic And Other Forms Of Payments

A Member's entire interest in the Association shall be distributed in the form of RMD Annuity payments that meet the requirements of paragraph 2 of this subsection or in the form of a single sum or an insurance company annuity contract that meets the requirements of paragraph 3.a of this subsection. Payments may be made in a combination of these forms of payment and may include lump sum refunds or withdrawals of Member contributions or death benefits as provided in the CERL provided that these forms comply with a reasonable good faith interpretation of Code section 401(a)(9).

2. General Rules Regarding RMD Annuities

If the Member's interest is to be paid in the form of an RMD Annuity, the RMD Annuity must meet the following requirements:

a. Periodic

RMD Annuities must be paid over equal payment intervals which may not be longer than one year.

b. Distribution Period

RMD Annuities will be paid over the life or lives of the Member and a beneficiary or over a period certain that does not exceed the maximum length of the period described in Section III or Section IV of this regulation.

c. Increases

RMD Annuities may not increase over time except in accordance with the rules in Section V.A.

d. Change in Period Paid

The period over which an RMD Annuity is paid can be changed only in accordance with Q&A-13 of section 1.401(a)(9)-6 of the Treasury regulations.

e. Commencement

Payment of the RMD Annuity must start no later than the Required Beginning Date.

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3. Other Forms

a. Annuity Contract

If the Member's interest is distributed in the form of an annuity contract purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code.

b. Individual Account

Any part of the Member's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code that apply to individual accounts.

C. Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals.

The amount that must be distributed on or before the Member's Required Beginning Date is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Member's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date. If the Member dies before distributions begin, the same rules apply with reference to the date distributions are required to begin under section IV.A.1 or IV.A.2.

SECTION III. RMD ANNUITY DISTRIBUTIONS BEGINNING DURING MEMBER'S LIFE

The following rules must be met to comply with the requirements of the Code and this regulation for RMD Annuities that begin during the Member's lifetime.

A. Single Life RMD Annuity

An RMD Annuity that begins no later than the Required Beginning Date and is paid for the Member's lifetime only, with no benefits paid to any other person, meets the requirements of the Code and this regulation.

B. Joint and Survivor RMD Annuity - Death of Member After Benefits Begin

If Member dies after RMD Annuity payments have commenced to the Member, then distributions must continue to be made over the remaining period over which distributions commenced in accordance with the schedule of payments made to the Member. Reasonable delay for administration may occur, but in this case payments that should have been made in accordance with the original payment schedule must be made with the first resumed payment.

C. Joint and Survivor RMD Annuity With Spouse as the Sole Beneficiary

An RMD Annuity that begins no later than the Required Beginning Date and is paid for the Member's lifetime and the lifetime of the Member's surviving Spouse, with no benefits paid to any other person, meets the requirements of the Code and this regulation regardless of the difference in age of the Member and the Member's Spouse.

D. Joint and Survivor RMD Annuity When the Sole Beneficiary Is Not the Member's Spouse

1. Limit on Percentage of Member's RMD Annuity Paid to Non-Spouse Beneficiary

The survivor annuity percentage of an RMD Annuity that begins no later than the Required Beginning Date and is paid for the Member's lifetime and the lifetime of a beneficiary other than the Member's surviving Spouse must not at any time exceed the applicable percentage of the RMD Annuity payment during the Member's lifetime, using the table set forth in Treasury regulation section 1.401(a)(9)-6, Q&A-2(c)(2), as determined in the manner described in Q&A-2(c)(1). This Treasury Regulation requires that the RMD Annuity payable to the Member's beneficiary after the Member's death not exceed the percentage of the RMD Annuity payable to the Member during the Member's life specified in the table if the adjusted age difference between the Member and the beneficiary is more than 10 years.

2. Rule Regarding Children of Member

Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(b), and taking into account the vested rights in retirement benefits created by the California Constitution, if a survivor benefit is payable to a surviving child of the Member for a limited period of time (such as until the child reaches the age of 22), the survivor benefit shall be treated as payable solely to the surviving Spouse of the Member.

3. Rule Regarding Other Beneficiaries

Solely to the extent required by section 401(a)(9) of Title 26 of the United States Code and under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(c) and taking into account the vested rights in retirement benefits created by the California Constitution, if a survivor benefit is payable to a person other than a surviving Spouse of the Member (or surviving child under paragraph 2 of this subsection D), then the present value (if any) of any benefit that would be in excess of the amount that can be paid in accordance with such regulation shall be paid to such person in a lump sum payment no later than one year after such person becomes entitled to survivor benefits.

E. Period Certain RMD Annuity

1. Spouse is the Sole Beneficiary

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If the Member's sole beneficiary is the Member's surviving Spouse, and the form of distribution is a period certain with no life annuity, the period certain may not exceed the joint life and last survivor expectancy of the Member and Spouse as determined in accordance with the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3, of the Treasury Regulations, using the Member's and Spouse's ages as of the Member's and Spouse's birthdays in the calendar year that contains the Annuity Starting Date.

2. Spouse is Not the Sole Beneficiary

When the Member's surviving Spouse is not the sole beneficiary then the period certain may not exceed the period established under the Uniform Lifetime Table in Q&A-2 of Treasury regulations section 1.401(a)(9)-9 for the calendar year that contains the Annuity Starting Date. If the Member is younger than age 70 in that year, then the distribution period for the Member is the distribution period for age 70 increased by the difference between 70 and the age of the Member in the year of the Annuity Starting Date. Also see below regarding Designated Beneficiaries.

3. Rule Regarding Children of Member

Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(b), and taking into account the vested rights in retirement benefits created by the California Constitution, the period certain distribution rules shall not apply to survivor benefits payable to children of the Member but the rules of section III.D above shall apply.

4. Rule Regarding Other Beneficiaries

Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(b), and taking into account the vested rights in retirement benefits created by the California Constitution, if a period certain survivor benefit is payable to a person other than a surviving Spouse of the Member, then the present value (if any) of any benefit that would be in excess of the amount that can be paid in accordance with such regulation shall be paid to such person in a lump sum payment no later than one year after such person becomes entitled to a survivor benefit.

SECTION IV. DISTRIBUTIONS WHEN MEMBER DIES BEFORE BENEFITS BEGIN

If a Member dies before distributions begin, distributions after the death of the Member must meet the following requirements:

A. When Distributions Must Begin

1. Spouse is the Sole Designated Beneficiary

If the Member's sole Designated Beneficiary is the Member's surviving Spouse, then, except as provided in paragraph 5 of this subsection A, distributions to the surviving Spouse must begin by December 31 of the calendar year immediately following the calendar year in which the Member died or, if later, by December 31 of the calendar year in which the Member would have reached age 70 1/2.

2. Spouse is not the Sole Designated Beneficiary

If the Member's sole Designated Beneficiary is not the Member's surviving Spouse, then, except as provided in paragraph 5 of this subsection A, distributions to the Designated Beneficiary must begin by December 31 of the calendar year immediately following the calendar year in which the Member died.

3. No Designated Beneficiary

If there is no Designated Beneficiary as of September 30 of the year following the year of the Member's death, then distributions of the Member's entire interest must be completed by December 31 of the calendar year that contains the fifth anniversary of the Member's death.

4. Death of Surviving Spouse Who Is the Sole Designated Beneficiary

If the Member's surviving Spouse is the Member's sole Designated Beneficiary and the surviving Spouse dies after the Member but before distributions to the surviving Spouse are required to begin, then this section IV.A, other than section IV.A.1 applies as if the surviving Spouse were the Member.

5. Election of Five Year Rule

A Designated Beneficiary may elect, at the time and in the manner determined by the System, to have the five year rule of section IV.A.3 apply, but solely to the extent that the Designated Beneficiary may elect, under the CERL, a benefit which will be paid in the required time period.

B. When Distributions Are Considered to Begin

For purposes of this Section IV, unless Section IV.A.4 applies, distributions are considered to begin on the Member's Required Beginning Date. If Section IV.A.4 applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section IV.A.1. If distributions under an RMD Annuity meeting the requirements of this regulation commence to the Member before the Member's Required Beginning Date (or to the Member's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section IV.A.1), the date distributions are considered to begin is the date distributions actually commence.

C. Length of Distribution Period

1. Member Is Survived by a Designated Beneficiary

a. General Rule

If the Member is survived by a Designated Beneficiary, the Member's entire interest in the System shall be distributed over the life of the Designated Beneficiary or over a period certain that does not exceed the period specified in C.1.b

b. Period Certain

The period certain in C.1.a may not exceed the Designated Beneficiary's life expectancy determined using the Single Life Table in Treasury regulations section 1.401(a)(9)-9, Q&A-1. If the Annuity Starting Date is in the first Distribution Calendar Year, the life expectancy shall be determined using the Designated Beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death. If the Annuity Starting Date is before the first Distribution Calendar Year, then the life expectancy is determined using the Designated Beneficiary's age in the calendar year that contains the Annuity Starting Date.

2. No Designated Beneficiary

If there is no Designated Beneficiary as of the September 30 of the year following the year of the Member's death, distribution of the Member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

3. Death of Surviving Spouse Before Distributions To Spouse Begin

If the Member's surviving Spouse is the Member's sole Designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Section IV.C shall apply as if the surviving Spouse were the Member, except that the time that distributions are required to begin is determined without regard to Section IV.A.1.

SECTION V. SPECIAL RULES

A. RMD Annuity Payment Increases

RMD Annuity payments will either not increase over time or increase only as follows:

1. Cost of Living Adjustments

a. Annual COLA Increases

RMD Annuity payments may increase by an annual percentage that does not exceed the percentage increase in an eligible cost-of-living index, as defined in Q&A-14(b) of section 1.401(a)(9)-6 of the Treasury regulations, for a 12-month period ending in the year during which the increase occurs or a prior year.

b. Cumulative COLA Increases

RMD Annuity payments may increase by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index, as defined in the preceding paragraph since the Annuity Starting Date, or if later, the date of the most recent percentage increase.

c. Additional COLA Increases

Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(b) and taking into account the vested rights in retirement benefits created by the California Constitution, RMD Annuity payments may increase by a percentage or amount that is determined by the System, in accordance with the CERL, to represent an appropriate amount to take account of cost of living increases affecting retirees or beneficiaries.

2. "Pop-Up's"

RMD Annuity Payments may increase to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the distribution period dies or is no longer the Member's beneficiary pursuant to a domestic relations order under applicable state law.

3. Single Sum Distribution

RMD Annuity Payments may increase to the extent necessary to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Member's death or under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-14(a)(5) and taking into account the vested rights in retirement benefits created by the California Constitution, to allow a beneficiary to select a lump sum distribution of all or part of the Member's interest under the System as provided in the CERL.

4. Plan Amendment

Benefits may increase if they result from an amendment to, or interpretation of, the CERL, the California Government Code or any other applicable law

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governing benefits for Members or from an ordinance, resolution or regulation pursuant to such law.

5. Other Benefits

Benefits may increase (i) to the extent increases are permitted in accordance with paragraph (c) or (d) of Q&A-14 of section 1.401(a)(9)-6 of the Treasury regulations dealing with additional permitted increases for annuity payments under annuity contracts purchased from an insurance company and additional permitted increases for annuity payments from a qualified trust; (ii) pursuant to Article 5.5 of the CERL dealing with the Supplemental Retiree Benefit Reserve; (iii) pursuant to Section 31691.1 of the CERL; and (iv) pursuant to sections 31681.1 et. seq., and 31739 et. seq. of the CERL.

B. Additional Accruals After First Distribution Calendar Year

Any additional benefits accruing to the Member in a calendar year after the first Distribution Calendar Year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.

C. Domestic Relations Orders

Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(b), and taking into account the vested rights in retirement benefits created by the California Constitution, if Article 8.4 of the CERL applies (relating to the establishment of separate accounts under domestic relations orders), then both the Member and the Member's former Spouse shall be deemed to be separate Members of the Association for purposes of these regulations and section 401(a)(9) of the Code.

D. Reciprocal Member

Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(b), and taking into account the vested rights in retirement benefits created by the California Constitution, if a deferred Member is a current employee and a member of another retirement system with which the Association has reciprocity under California law, then for purposes of determining the Required Beginning Date under the Association the Member shall be treated as a current employee of the Association and as such, as if he or she had not retired, even if he or she has attained age 70½.

E. Public Safety Member Killed In Line of Duty

Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(b), and taking into account the vested rights in retirement benefits created by the California Constitution, any additional retirement benefits paid under CERL section 31787.5 to the surviving Spouse of a public safety Member killed in the line of duty shall not be limited by Code section 401(a)(9) because they shall be treated as incidental death benefits.

F. Rollovers

Amounts that are required minimum distributions cannot be rolled over to another qualified retirement plan or other tax-favored vehicle. The amount that cannot be rolled over shall be determined in accordance with Treasury regulations section 1.402(c)-2, Q&A-7.

G. Payments to Surviving Child Treated as Made to Surviving Spouse

Solely to the extent required by section 401(a)(9) of Title 26 of the United States Code and under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(c) and taking into account the vested rights in retirement benefits created by the California Constitution, for purposes of Code section 401(a)(9) and these regulations, payments to a Member's surviving child in accordance with the requirements of Q&A-15 of section 1.401(a)(9)-6 of the Treasury regulations shall be treated as if such payments had been made to the Member's surviving Spouse to the extent the payments become payable to the surviving Spouse upon the child's attainment of the age of majority, as determined in accordance with Q&A-15 of section 1.401(a)(9)-6 of the Treasury regulations, or upon the occurrence of such other event specified in Q&A-15 of section 1.401(a)(9)-6 of the Treasury regulations, or as otherwise specified in IRS guidance under section 401(a)(9) of the Code.

SECTION VI DEFINITIONS

A. Annuity Starting Date

"Annuity Starting Date" means the first day of the first period for which a retirement benefit is payable as an RMD Annuity or, in the case of a retirement benefit not payable in the form of an RMD Annuity, the first day on which all events have occurred which entitle the Member to payment.

B. Designated Beneficiary

"Designated Beneficiary" means the individual who is designated by the Member (or the Member's surviving Spouse) as the beneficiary of the Member's interest under the Association and who is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the Treasury regulations. Accordingly, entities other than individuals, such as the Member's estate or a trust, cannot be a Designated Beneficiary of a Member's interest in the Association. However, the individuals who are beneficiaries under a designated trust shall be treated as Designated Beneficiaries for purposes of determining the distribution period under this regulation and Code section 401(a)(9) if all of the applicable requirements of Treasury regulation section 1.401(a)(9)-4, Q&A-5(b) are met. If all of such applicable requirements are not met, then the distribution of the Member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

C. Distribution Calendar Year

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"Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section IV.A of this regulation.

D. Required Beginning Date

"Required Beginning Date" means April 1 of the calendar year following the later of the calendar year in which the Member attains age 70½ or the calendar year in which the Member retires.

E. RMD Annuity

"RMD Annuity" means, for purposes of the required minimum distribution rules in section 401(a)(9) of the Code, a distribution form providing for periodic payments for a specified period of time.

F. Spouse

Effective June 26, 2013, consistent with Federal tax rules, the term "Spouse" means a person who is lawfully married under California law, including marriages recognized under California Family Code section 308 that were entered into in another jurisdiction (another state, the District of Columbia, a United States territory or a foreign jurisdiction) which also include marriages of same-sex individuals that were validly entered into in another jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a jurisdiction that does not recognize the validity of same-sex marriage. In accordance with Federal tax rules, the term "Spouse" does not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under the law of another jurisdiction that is not denominated as a marriage under the laws of that state (whether opposite-sex or same-sex relationships).

**MENDOCINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**

**REGULATIONS FOR
IRC CODE § 401(a)(17)
COMPENSATION LIMIT**

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

REGULATIONS FOR IRC SECTION 401(a)(17) COMPENSATION LIMIT

SECTION I. PURPOSE AND SCOPE

In accordance with section 31525 and section 31671 of the California Government Code, the regulations set forth herein are effective as of December 31, 2014, and reaffirm and clarify the existing practices of the Mendocino County Employees' Retirement Association (the "Association") with respect to the limit on annual compensation under section 401(a)(17) of the Internal Revenue Code (the "Code"). For these regulations, the Code includes Treasury regulations issued under section 401(a)(17).

These regulations are intended to be in accordance with the Code and the applicable Treasury regulations. To the extent there is a conflict between these regulations and the Code and Treasury regulations, the applicable federal law will govern.

The Association may establish reasonable procedures for complying with the limit on annual compensation under section 401(a)(17) of the Code that it deems necessary or desirable to comply with applicable tax laws or for administrative purposes.

Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. LIMITATION ON ANNUAL COMPENSATION EARNABLE

A. In General

1. Annual Compensation Earnable Limit

The annual amount of compensation that is taken into account in determining all benefits provided by the Association to affected Members for any year, which is referred to in the CERL and in these Regulations as "Compensation Earnable", shall in no event be greater than the amount allowed by Code section 401(a)(17) adjusted in accordance with the Code for increases in the cost of living. This limit has been increased by cost of living adjustments to \$260,000 for 2014. This limit is called the Annual Compensation Earnable Limit in these regulations. (Certain Members may also be subject to the limitation on Compensation Earnable under Government Code Section 7522.10(c) and (d) which would produce a lower limit than the limit under section 401(a)(17) of the Code.)

2. Members Affected By the Annual Limit

a. Not Applicable to Pre-July 1, 1996 Association Members

The Annual Compensation Earnable Limit does not apply to any individual who first became a Member of the Association prior to July 1, 1996.

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b. Applies to New Members of the Association On and After July 1, 1996

In accordance with Government Code section 31671, the Annual Compensation Earnable Limit shall apply to all individuals who first become Members of the Association on or after July 1, 1996.

c. Date First Becomes a Member

An individual first becomes a Member on the date that a Member first became a Member in the Association, regardless of whether the Member terminated and resumed participation in the Association at a later date.

B. Operational Rules, In General

This section applies to Members who are not grandfathered under section A,2,a.

1. Limited Compensation Earnable

All Compensation Earnable that would be taken into account for determining benefits provided by the Association without regard to these regulations is subject to the Annual Compensation Earnable Limit. Such Compensation Earnable is not limited to salary or to base salary.

2. Benefits Affected by the Limit

The Annual Compensation Earnable Limit applies to the determination of all benefits provided by the Association including pensions, annuities, retirement allowances, death benefits, disability benefits, refunds and withdrawals that are determined by member contributions (including such contributions that are or may have been in the past "picked up" by the employer) and earnings thereon.

3. Compensation Earnable from More Than One Employer

If Compensation Earnable from more than one employer that participates in the Association is taken into account in determining a Member's benefits, the Annual Compensation Earnable Limit shall apply separately to the Compensation Earnable from each employer. For example, if the Compensation Earnable Limit is \$260,000 for the year and the Member has Compensation Earnable of \$200,000 from one participating employer and \$100,000 from another participating employer, the unreduced total Compensation Earnable from each employer may be taken into account. The Annual Compensation Earnable Limit does not apply to the aggregate of Compensation Earnable earned from all employers that participate in the Association.

4. Proration for Short Plan Year

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If a plan year consists of fewer than 12 months, the Annual Compensation Earnable Limit is an amount equal to the otherwise applicable Annual Compensation Earnable Limit multiplied by a fraction, the numerator of which is the number of months in the short plan year, and the denominator of which is 12. No proration is required for participation of less than a full plan year.

5. Reciprocity and New Membership in the Association

An individual who becomes a Member of the Association on or after July 1, 1996, and who has reciprocity with another public sector retirement plan nevertheless is a new Member of the Association for purposes of this regulation. Membership before July 1, 1996 in another retirement plan with which the Association has reciprocity does not create pre-July 1, 1996 Association membership for purposes of the Annual Compensation Earnable Limit.

6. Reciprocity and Prior Membership In the Association

A person who was a grandfathered Member of the Association prior to July 1, 1996 under section A,2,a, who terminated employment with an employer that participated in the Association, remains a Member of the Association prior to July 1, 1996. Therefore, if the Member established reciprocity between another public sector retirement plan and the Association, any higher Compensation Earnable that is earned under the other plan shall be taken into account by the Association in accordance with the rules of reciprocity and that Compensation Earnable shall not be limited by the Annual Compensation Earnable Limit.

7. Relationship Between Section 415 Limit and Compensation Earnable Limit

The limits of Code section 415 and Code section 401(a)(17) are separate and independent. Each limit is operated according to its own rules and applies separately. Therefore, the Annual Compensation Earnable Limit may apply to a Member and the Code section 415 limit may not apply. Similarly, the Code section 415 limit may apply to a Member and the Annual Compensation Earnable Limit may not apply. Also, both of these limits may apply to the same Member.

8. Clarification Concerning Member Contributions

Because Member contributions are the basis for benefits provided by the Association, Member contributions shall not be made by taking into account Compensation Earnable in excess of the Annual Compensation Earnable Limit. To the extent the provisions of the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), including Government Code Section 7522.10(h) include greater limitations on the manner in which Member contributions may be calculated, such limits shall apply to the calculation of Member contributions.

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9. General Plan Year Rule for Determining the Limit

If Compensation Earnable for any prior plan year is taken into account in determining a Member's benefits for the current plan year, the Compensation Earnable for such prior plan year is subject to the applicable Annual Compensation Earnable Limit in effect for that prior plan year. In addition, in determining benefits for plan years beginning on or after January 1, 2002, the Annual Compensation Earnable Limit in effect for plan years beginning before that date is \$200,000.

SECTION III. PLAN YEAR AND COST OF LIVING ADJUSTMENTS

A. Annual Adjustment for Cost-of-Living Increases

The Annual Compensation Earnable Limit may be adjusted annually by the Internal Revenue Service for cost of living changes in accordance with the Code.

B. General Rule--Application of Limit to a Plan Year

In general, the Annual Compensation Earnable Limit is applied to the Compensation Earnable for the plan year on which accruals of benefits from the Association are based.

C. Plan Year Compensation Earnable

1. General Rule

To the extent that the Association determines Compensation Earnable for benefit accruals for a plan year based on Compensation Earnable for the plan year, then the Annual Compensation Earnable Limit that applies for that plan year is the limit in effect for the calendar year in which the plan year begins. Since the Association's plan year corresponds to the fiscal year beginning on the first day of July, the Compensation Earnable used to determine all benefit accruals for each plan year is limited to the Annual Compensation Earnable Limit in effect as of January 1 of the calendar year in which the plan year begins.

2. Member Contributions

Since the Association's plan year is the fiscal year beginning on the first day of July, Compensation Earnable used to determine Member contributions for each plan year shall be limited to the Annual Compensation Earnable Limit in effect as of January 1 of the calendar year in which the plan year begins.

D. Examples

1. Example - Retirement Allowance

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The retirement allowance provided by the Association for certain Members is based on the highest 12 consecutive months of Compensation Earnable ending within the plan year. The Annual Compensation Earnable Limit was \$250,000 for the 2012 calendar year and \$255,000 for the 2013 calendar year. A Member retires in May, 2013. The Member's highest 12 consecutive months of Compensation Earnable is for the period May 1, 2012 through April 30, 2013. The annual Compensation Earnable used for determining this Member's benefits for the 2013 year is limited to \$250,000, not \$255,000, because this is the limit in effect for the calendar year in which the 12-consecutive month period began.

For some Members of the Association, including Members subject to the requirements enacted under the Public Employees' Pension Reform Act of 2013 ("PEPRA"), the retirement allowance provided by the Association is based on the highest 36 consecutive months of Compensation Earnable ending within the plan year. The Annual Compensation Earnable Limit was \$245,000 for 2011, \$250,000 for 2012, and \$255,000 for 2013. A Member retires in May 2014. The Member has \$300,000 per year (\$25,000 per month) of Compensation Earnable during the Member's highest 36 consecutive months of Compensation Earnable for the period May 1, 2011 through April 30, 2014. The Association may not base the Member's benefits for 2014 on annual Compensation Earnable in excess of \$250,000, the average of the limits in effect for each of the three 12-consecutive month periods: the May 1, 2011 through April 30, 2012 period is capped at \$245,000, the 2011 limit; the May 1, 2012 through April 30, 2013 is capped at \$250,000, the 2012 limit; and the May 1, 2013 through April 30, 2014 is capped at \$255,000, the 2013 limit. The average of these capped amounts is the Annual Compensation Earnable Limit for determining benefits for the 2014 plan year for a Member who retires in May, 2014 because that is the limit for the calendar year in which the Member's average compensation earnable begins.

2. Example: Member Contributions

The refund or withdrawal benefits from Member contributions are accrued on an annual basis. The Annual Compensation Earnable Limit was \$245,000 for the 2011 calendar year; \$250,000 for the 2012 calendar year; and \$255,000 for the 2013 calendar year.

Since the Association's plan year corresponds to the fiscal year, the Annual Compensation Earnable Limit was \$245,000 for the entire plan year beginning July 1, 2011 and ending June 30, 2012; \$250,000 for the entire plan year beginning July 1, 2012 and ending June 30, 2013; and \$255,000 for the entire plan year beginning July 1, 2013 and ending June 30, 2014.

**MENDOCINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**

**REGULATIONS FOR
IRC CODE § 401(a)(31) & 402(c)**

ROLLOVERS

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

REGULATIONS FOR IRC SECTION 402(c) ROLLOVERS

SECTION I. PURPOSE AND SCOPE

In accordance with section 31485.15 and section 31525 of the California Government Code, the regulations set forth herein are effective as of December 31, 2014, and reaffirm and clarify the existing practices of the Mendocino County Employees' Retirement Association (the "Association") with respect to rollovers into and out of the Association in accordance with the Internal Revenue Code (the "Code"). For these regulations, Code includes the Treasury regulations issued under the Code.

These regulations are intended to be in accordance with the Code and the applicable Treasury regulations. To the extent there is a conflict between these regulations and the Code and Treasury regulations, the applicable federal law will govern.

The Association may establish any reasonable procedures for paying rollover distributions or accepting rollover contributions that it deems necessary or desirable for complying with applicable tax laws or for administrative purposes.

Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. ROLLOVER DISTRIBUTIONS FROM THE ASSOCIATION

A. Rollovers

1. Direct Rollover

A "Direct Rollover" is that portion of an Eligible Rollover Distribution that the Association pays directly to an Eligible Retirement Plan, and may also be referred to as a trustee-to-trustee transfer to an Eligible Retirement Plan, at the direction of an Eligible Individual.

2. Indirect Rollover

An "Indirect Rollover" is that portion of an Eligible Rollover Distribution that the Association pays directly to an Eligible Individual.

B. Eligible Individuals

1. Eligible Individual

Only an "Eligible Individual" may elect a Direct Rollover. An "Eligible Individual" is:

a. Terminated From Employment

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A Member who has terminated employment from the County (or other agency participating in the Association) and who is eligible to withdraw his or her accumulated Member contributions under the Association;

b. Surviving Spouse

A deceased Member's surviving Spouse;

c. Alternate Payee

A Member's or former Member's Spouse or former Spouse who is the alternate payee under a domestic relations order, as defined in Code section 414(p), with regard to the interest of the Spouse or former Spouse; and

d. Non-Spouse Beneficiary

A deceased Member's non-spouse beneficiary who is a "designated beneficiary" under Code section 401(a)(9)(E), subject to the non-spouse beneficiary provisions in Section II.G.

2. Spouse

Effective June 26, 2013, consistent with Federal tax rules, the term "Spouse" means a person who is lawfully married under California law, including marriages recognized under California Family Code section 308 that were entered into in another jurisdiction (another state, the District of Columbia, a United States territory or a foreign jurisdiction) which also include marriages of same-sex individuals that were validly entered into in another jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a jurisdiction that does not recognize the validity of same-sex marriage. In accordance with Federal tax rules, the term "Spouse" does not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under the law of another jurisdiction that is not denominated as a marriage under the laws of that state (whether opposite-sex or same-sex relationships).

C. Payments that Can and Cannot be Rolled Over

1. Eligible Rollover Distribution Required

The Association will pay a Direct Rollover on behalf of an Eligible Individual only if the payment is an "Eligible Rollover Distribution."

2. Eligible Rollover Distribution Defined

An "Eligible Rollover Distribution" is any distribution to an Eligible Individual of all or any portion of the amount credited to the Eligible Individual under the Association. These amounts may include (a) refunds of Member contributions plus accumulated interest, or (b) one-time lump sum death benefit payments.

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3. After-Tax Portion

The portion of a distribution that consists of after-tax Member contributions may be rolled over if the after-tax funds are transferred in a direct trustee-to-trustee transfer to (a) a qualified trust or (b) an annuity contract described in Code Section 403(b). After-tax Member contributions may also be rolled over to an individual retirement account or annuity described in Code Section 408(a) or (b). The qualified trust or annuity contract must separately account for the transferred after-tax amounts, and must also separately account for the earnings on the after-tax amounts.

4. Exclusions From Eligible Rollover Distributions

An Eligible Rollover Distribution does not include the following kinds of payments:

a. Periodic Payments

Payments that are part of a series of substantially equal periodic payments (i) made at least once per year over the life (or life expectancy) of the Eligible Individual or the life (or life expectancy) of the Eligible Individual and his or her designated beneficiary, or (ii) made for a period of 10 years or more; or

b. Required Distributions

Payments that are "required minimum distributions" under Code Section 401(a)(9).

D. **Eligible Retirement Plans**

1. Payment to Eligible Retirement Plan

The Association will pay an Eligible Rollover Distribution directly to an "Eligible Retirement Plan."

2. Eligible Retirement Plan Defined

An "Eligible Retirement Plan" is:

- a. An annuity plan described in Code Section 403(a);
- b. An annuity contract described in Code Section 403(b);
- c. A governmental eligible deferred compensation plan described in Code Section 457(b) that agrees to separately account for amounts transferred into such plan from the Association;
- d. An individual retirement annuity described in Code Section 408(a);
- e. An individual retirement account described in Code Section 408(b);

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- f. A Roth IRA described in Code Section 408A; or
- g. A qualified trust described in Code section 401(a) (including defined benefit pension plans and defined contribution plans such as 401(k) plans, profit sharing plans, and money purchase plans).

3. Certain Exclusions

An Eligible Retirement Plan does not include, and a rollover cannot be made to, a SIMPLE IRA or a Coverdell Education Savings Account.

E. **Direct Rollovers**

1. Withholding and Direct Rollovers

The Association will not withhold any federal or state income taxes from a Direct Rollover. The only exception is that the Association will withhold federal or state income taxes from a Direct Rollover to a Roth IRA if the Eligible Individual requests that withholding on a form and in the manner prescribed by the Association.

2. Administrative Requirements, In General

An Eligible Individual who requests a Direct Rollover must complete a distribution form in the manner and form that the Association prescribes. The Association may require the Eligible Individual to provide any reasonable information and/or documentation for purposes of administering the Direct Rollover in accordance with the Code.

3. Rollover Check

The Eligible Individual must provide the Association with the name of the Eligible Retirement Plan to which the rollover check will be made payable for his or her benefit. If the Eligible Individual so chooses, the Association will provide this rollover check directly to the Eligible Individual who will be responsible for delivering the check to the recipient IRA or plan.

4. Eligible Individual's Responsibility Re Recipient Plan

The Eligible Individual is responsible for ensuring that any Eligible Retirement Plan that he or she has designated to receive the Eligible Individual's distribution from the Association in a Direct Rollover is an Eligible Retirement Plan that will accept and receive the rollover on his or her behalf in accordance with the applicable tax rules.

5. Time of Payment

The Association will pay a Direct Rollover on behalf of an Eligible Individual as soon as is reasonably and administratively practicable in accordance with its withdrawal and/or death benefit payment processes.

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F. Indirect Rollovers

1. Choice of Indirect Rollover

An Eligible Individual, other than a non-spouse beneficiary, may also choose to receive a rollover payment as an Indirect Rollover.

2. Indirect Rollover Withholding

An Indirect Rollover is subject to 20% federal income tax withholding and any applicable state withholding. The Association will withhold and deduct these taxes on behalf of the Eligible Individual as prescribed by federal and applicable state law.

3. Eligible Individual's Responsibility Re Recipient Plan

It is the responsibility of the Eligible Individual to roll over all or some portion of his or her Indirect Rollover payment to an IRA or eligible employer plan within 60 days if he or she wants the payment to qualify as a rollover for tax purposes. If an Eligible Individual wants to roll over 100% of the payment, the Eligible Individual must replace the 20% that was withheld for federal income taxes (and any applicable state withholding) with other money.

G. Direct Rollover of a Non-Spousal Distribution

1. Trustee-To-Trustee Transfer Required

A rollover on behalf of a non-spouse beneficiary must be a direct or trustee-to-trustee transfer and may not be paid in the form of an Indirect Rollover.

2. Non-Spouse Beneficiaries Who May Rollover and Rollover to Inherited IRA Only

A non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) may roll over all or any portion of the non-spouse beneficiary's Eligible Rollover Distribution to an IRA that is established by the non-spouse beneficiary for purposes of receiving the distribution and that is treated as an "inherited IRA" under the Code. The IRA must be established in a manner that identifies it as an IRA with respect to a deceased individual and it must identify the deceased individual and the beneficiary (for example, "Tom Smith as beneficiary of John Smith").

3. Trust as Beneficiary

If the non-spouse beneficiary is a trust, the Association may make a Direct Rollover to an IRA on behalf of the trust, provided the beneficiaries of the trust satisfy the requirements to be designated beneficiaries within the meaning of Code Section 401(a)(9)(E). The IRA on behalf of the trust must be established in a manner that identifies it as an IRA with respect to a deceased

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individual and it must identify the deceased individual and the trust beneficiary (for example, "The Smith Family Trust as beneficiary of John Smith").

H. Notice Requirements

1. 402(f) Notice From the Association

The Association will provide the tax notice required under Code Section 402(f) to each Eligible Individual who requests a withdrawal from the Association.

2. Time Periods

The Association will not process any withdrawals from the Association until 30 days after the date such notice is received by the Eligible Individual requesting the withdrawal. If, however, the Eligible Individual waives this 30-day period on a form and in the manner prescribed by the Association, the Association may process the withdrawal before the 30-day period expires.

SECTION III. ROLLOVER CONTRIBUTIONS TO THE ASSOCIATION

Adoption of regulations providing for the acceptance of certain rollover contributions as determined below does not create any continuing entitlement for Eligible Members to make rollover contributions to the Association in the future and the right to make rollover contributions to the Association may be amended or terminated at any time and for any reason.

If the Association has determined to permit any rollover contributions, the Association will permit Eligible Members to make a rollover contribution to the Association subject to the limitations and conditions described in this Section III.

A. General Rules

1. Eligible Member

An "Eligible Member" is (1) an active Member of the Association, or (2) a Member of the Association that has elected a deferred retirement.

2. Rollovers Allowed

The Association will permit an Eligible Member to make a rollover contribution to the Association for (a) a purchase of service credit (to the extent a purchase of service credit is not prohibited under the California Public Employees' Pension Reform Act of 2013 ("PEPRA")), or (b) a redeposit of previously withdrawn funds plus accumulated interest.

3. Separate Accounting

The Association will separately account for all rollover contributions.

4. Certification to the Association By Member

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Only eligible rollover distributions as defined by Code Section 402(c)(4) can be contributed to the Association. In addition to any requirements under subsections B, C, and D below, each Eligible Member making a rollover contribution to the Association must certify in writing the source of the rollover funds and that the rollover contribution is an eligible rollover distribution under the Code. The Association will not accept rollovers of any after-tax contributions or amounts attributable to designated Roth contributions, amounts that represent minimum required distributions, or any rollover that is an indirect rollover.

5. Elections and Association Discretion

An Eligible Member must make an election to purchase service credit or redeposit previously withdrawn contributions with a rollover contribution in the manner and form that is prescribed by the Association. The Association has final discretionary authority to determine whether any required information or documentation is satisfactory, whether a purchase of service credit would be prohibited under PEPRA, and whether the Association will accept an Eligible Member's rollover contribution.

6. Correction of Errors

If the Association accepts a rollover contribution that it later determines was not eligible to be rolled over to the Association, the Association will distribute, as soon as administratively possible, the amount of the rollover contribution back to the Eligible Member, plus accumulated interest.

B. Rollovers from Qualified Plans

1. Acceptance of Rollover

The Association may accept a rollover from another plan that is qualified under Code Section 401(a) and exempt from tax under Code Section 501(a).

2. Required Due Diligence Procedure

The Association must take reasonable steps to confirm the sending plan's tax-qualified status and that the rollover contribution is valid. The Association may rely on IRS guidance such as that provided in Revenue Ruling 2014-9 and any successor guidance with respect to simplified due diligence processes that may be allowed by the Internal Revenue Service.

a. Eligible Member Certification

The Eligible Member must provide the following additional information to the Association:

(i) A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution is from a Code section 401(a) qualified plan, contains no after-tax or designated Roth contributions or earnings, or

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any amounts representing a required minimum distribution under Code section 401(a)(9); or

(ii) A signed certification from the transferring plan's administrator that the rollover contribution contains no after-tax or designated Roth contributions or earnings, nor any amounts representing a required minimum distribution under Code section 401(a)(9).

If an Eligible Member does not provide such evidence, the Association will not accept the rollover.

b. Association Verification of Payment Source

The Association must take reasonable steps to verify that the payment source (on the incoming check or wire transfer) is the former 401(a) plan of the Eligible Member as represented by the Eligible Member on his or her request to make a rollover.

c. Association Verification That the Plan is a Tax-Qualified Plan

The Association must take reasonable steps to verify that the rollover will be from a tax-qualified plan which can include the following or any other methods allowed in guidance issued by the Internal Revenue Service.

(i) The Association may look up the transferring plan's latest Form 5500 filing, if any, in the Department of Labor's EFAST2 database for assurance that the plan is intended to be a qualified plan. The Association will check the entry on the line for characteristics indicating that the plan is intended to be a qualified plan (e.g. examining line 8a on the current Form 5500 or line 9a on Form 5500-SF). If Code 3C is not entered on these lines, the Association may reasonably conclude that the plan is qualified, unless the Association has any direct evidence to the contrary.

(ii) If the qualified plan is not required to file Form 5500 or Form 5500-SF, then the Eligible Member must provide one of the following to the Association demonstrating that the source of the rollover contribution is a qualified plan: (a) a copy of the plan's most recent favorable determination letter from the Internal Revenue Service stating that the plan is tax-qualified and a written certification from the plan's administrator that the plan continues to be tax-qualified, or (b) a written and signed certification from the plan's administrator that the source of the eligible rollover distribution is a qualified plan under Code Section 401(a).

C. Rollovers from an IRA

1. Acceptance of Rollover

The Association may accept a rollover from an individual retirement account or annuity (IRA) described in Code Section 408(a) or Code Section 408(b).

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2. Required Due Diligence Procedure

The Association must take reasonable steps to confirm the IRA's status and that the rollover contribution is valid. The Association may rely on IRS guidance such as that provided in Revenue Ruling 2014-9 and any successor guidance with respect to simplified due diligence processes that may be allowed by the Internal Revenue Service.

a. Eligible Member Certification

The Eligible Member must provide the following additional information to the Association:

(i) A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution is from his or her IRA and contains no after-tax or designated Roth contributions or earnings, nor any amounts representing a required minimum distribution under Code section 401(a)(9) or ; or

(ii) If the Eligible Member cannot certify, with respect to the after-tax or designated Roth contributions, a signed certification from an accountant or tax advisor or the IRA trustee/custodian providing the amount of pre-tax contributions and after-tax or designated Roth contributions in the IRA .

The Association will only accept a rollover contribution from the IRA in the amount of the pre-tax contributions and earnings. If an Eligible Member does not provide such evidence, the Association will not accept the rollover.

b. Association Verification of Payment Source

The Association must take reasonable steps to verify that the payment source (on the incoming check or wire transfer) is the IRA of the Eligible Member as represented by the Eligible Member on his or her request to make a rollover.

D. Rollovers from Other Plans: 457(b) and 403(b)

1. Acceptance of Rollover

The Association may accept rollover contributions from an eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (a "governmental 457(b) plan"), and an annuity contract described in Code section 403(b).

2. Required Due Diligence Procedure

The Association must take reasonable steps to confirm the sending plan's status as an eligible 457(b) plan or an eligible Code section 403(b) annuity or custodial account and that the rollover contribution is valid. The Association may rely on IRS guidance such as that provided in Revenue Ruling 2014-9 and any

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successor guidance with respect to simplified due diligence processes that may be allowed by the Internal Revenue Service.

a. Eligible Member Certification

The Eligible Member must provide the following additional information to the Association:

(i) A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution is from an eligible 457(b) or 403(b) plan and contains no after-tax or designated Roth contributions or earnings; or

(ii) A signed certification from the transferring plan's administrator that the rollover contribution contains no after-tax or designated Roth contributions or earnings.

If an Eligible Member does not provide such evidence, the Association will not accept the rollover.

b. Association Verification of Payment Source

The Association must take steps to verify that the payment source (on the incoming check or wire transfer) is the former eligible 457(b) or 403(b) plan of the Eligible Member as represented by the Eligible Member on his or her request to make a rollover.

c. Association Verification That the Plan is an Eligible Plan

The Association must take reasonable steps to verify that the rollover will be from an eligible 457(b) plan or 403(b) plan which can include the following or any other methods allowed in guidance issued by the Internal Revenue Service.

(i) The Association may look up the transferring plan's latest Form 5500 filing, if any, in the Department of Labor's EFAST2 database for assurance that the plan is intended to be a qualified plan. The System will check the entry on the line for characteristics indicating the plan is intended to be an eligible 457(b) or 403(b) plan (e.g., examining line 8a on the current Form 5500 or line 9a on Form 5500-SF). If Code 3C is not entered on these lines, the Association may reasonably conclude that the plan is an eligible plan, unless the Association has any direct evidence to the contrary.

(ii) If the 457(b) or 403(b) plan is not required to file Form 5500 or Form 5500-SF, then the Eligible Member must provide one of the following to the Association demonstrating that the source of the rollover contribution is an eligible governmental 457(b) plan or a Code section 403(b) plan: (a) a copy of the transferring plan's most recent private letter ruling from the Internal Revenue Service stating that the transferring plan qualifies as an eligible governmental 457(b) plan or a Code section 403(b) plan, as applicable, and a signed certification from the transferring plan's administrator that the transferring plan continues to be so qualified, or (b) a signed certification from

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the transferring plan's administrator that the rollover distribution source is an eligible governmental 457(b) plan or a Code section 403(b) plan, as applicable.

If the above verification cannot be made, the Association will not accept the rollover.

**MENDOCINO COUNTY EMPLOYEES'
RETIREMENT
ASSOCIATION**

REGULATIONS FOR

IRC CODE § 415

ANNUAL LIMITS

Mendocino County Employees' Retirement Association

REGULATIONS FOR IRC SECTION 415(b)

LIMITS ON ANNUAL BENEFITS

SECTION I. PURPOSE AND SCOPE

In accordance with section 31525 and section 31899 et. seq. of the California Government Code, the regulations set forth herein are effective as of December 31, 2014, and reaffirm and clarify the existing practices of the Mendocino County Employees' Retirement Association (the "Association") with respect to the limits on benefits under section 415(b) of the Internal Revenue Code (the "Code"). For these regulations, the Code includes Treasury regulations issued under section 415(b). To the extent there is a conflict between these regulations and the Code, the Code governs.

The Association may establish reasonable procedures for complying with the limits on benefits under section 415(b) of the Code that it deems necessary or advisable for complying with applicable tax laws or for administrative purposes.

Capitalized terms used in this Regulation are defined in Section VII. Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. ANNUAL BENEFIT LIMIT

A. Annual Benefit Limit, In General

1. Annual Limit

Unless the alternative limit described in subsection E of this Section applies, the Annual Benefit payable to a Member under the Association at any time shall not exceed \$210,000 (for 2014) or such other dollar limit specified under section 415(b)(1)(A) of the Code, automatically adjusted under § 415(d) of the Code, effective January 1 of each year, as provided by the Internal Revenue Service

2. Maximum Payment

If the benefit the Member would otherwise be paid in a Limitation Year would be in excess of the limit in A.1, the benefit shall be limited to a benefit that does not exceed the limit.

3. COLA Adjustment

In the case of a Member who has had a severance from employment with the Employer, the Annual Benefit Limit applicable to the Member in any Limitation Year beginning after the date of severance shall be automatically adjusted under § 415(d) of the Code.

4. Multiple Annuity Starting Dates

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- a. For a Member who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of these regulations as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates.
- b. For this purpose, the determination of whether a new starting date has occurred shall be made in accordance with section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Treasury regulations.

5. Actuarial Adjustment For Forms Of Benefit

Except as provided in paragraph 6 of this Section II.A, if the Member's benefit is payable in a form other than a Straight Life Annuity, then solely for purposes of applying the limits of Code section 415 and of this regulation, the actuarially equivalent Straight Life Annuity shall be determined in accordance with paragraph a or b below, whichever is applicable.

- a. Annuities. If the Member's benefit is payable in the form of a non-decreasing life annuity or other form of benefit described in Treasury regulation section 1.417(e)-1(d)(6) (e.g., other than a lump sum, installments, a decreasing annuity or a term certain), then the actuarially equivalent Straight Life Annuity is equal to the greater of:
 - i. The Straight Life Annuity (if any) payable to the Member under the Association commencing at the same annuity starting date as the form of benefit payable to the Member, or
 - ii. The annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member computed using:
 - A. The Applicable Mortality Table; and
 - B. A 5% interest assumption.
- b. Lump sums, installments, etc. If the Member's benefit is payable in the form of a lump sum, installments, a decreasing annuity, term certain or other form of benefit not described in Treasury regulations section 1.417(e)-1(d)(6), then the Straight Life Annuity that is actuarially equivalent to the Member's form of benefit is equal to the greatest of:
 - i. The annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the

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same actuarial present value as the form of benefit payable to the Member computed using the interest rate and the mortality table specified in the Association for adjusting benefits in the same form;

- ii. The annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member computed using a 5.5 percent interest rate and the Applicable Mortality Table; or
- iii. The annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member computed using the Applicable Interest Rate and the Applicable Mortality Table divided by 1.05.

6. No Actuarial Adjustment (Or Limitation) Required For Certain Benefits.

In determining the Annual Benefit, no actuarial adjustment to the benefit shall be made for the following benefits or benefit forms:

- a. Qualified joint and survivor annuity. Survivor benefits payable to a surviving Spouse under a joint and survivor annuity that would qualify as a qualified joint and survivor annuity defined in section 417(b) of the Code. If benefits are paid partly in the form of a qualified joint and survivor annuity and partly in some other form (such as a single sum distribution), the rule of this paragraph applies only to the survivor annuity payments under the portion of the benefit that is paid in the form of a qualified joint and survivor annuity.
- b. Benefits that are not "retirement benefits". Benefits that are not directly related to retirement benefits (such as pre-retirement qualified disability benefits, preretirement incidental death benefits, and postretirement medical benefits). Additionally, these benefits shall not be subject to the Annual Benefit Limit.
- c. Certain automatic benefit increases. Benefits that meet the following requirements: (i) the Association provides for automatic periodic increases such as a form of benefit that automatically increases the benefit paid according to a specified percentage or objective index (but not a benefit that is increased on an ad hoc basis or a basis that is separately determined by action of the Association's Board of Retirement or the County's Board of Supervisors) and (ii) the form of benefit complies with Code section 415(b) without regard to the automatic benefit increase.

In no event shall the amount payable to the Member under the form of benefit in any Limitation Year be greater than the Annual

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Benefit Limit applicable at the Annuity Starting Date increased by the amounts provided in Code section 415(d). Also if the form of benefit without regard to the automatic benefit increase is not a Straight Life Annuity, then the Annual Benefit at the Annuity Starting Date is determined by converting the form of benefit to an actuarially equivalent Straight Life Annuity, as provided in section II.B.1 of this regulation.

7. Rules for Determining Annual Benefit.

- a. Social Security Supplements, Etc. The determination of the Annual Benefit shall take into account social security supplements described in § 411(a)(9) of the Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c), of the Treasury regulations.
- b. Member Contributions. The determination of the Annual Benefit shall disregard benefits attributable to Member contributions or rollover contributions. Benefits attributable to Member contributions do not include any benefits that are made on a pre-tax basis such as pickups under Code section 414(h)(2) or such as Member contributions that are actually paid by the Member's employer.
- c. Rollovers. The amount of any benefits attributable to Member contributions and to rollover contributions shall be determined in accordance with Code section 415.
- d. Voluntary Contributions. Member contributions that are defined as "voluntary" contributions under Code section 415 (such as certain contribution under California Government Code section 31627) are not subject to the limits of this regulation but are subject to the limits of Code section 415(c) concerning defined contribution plans.

B. Reduction for Less Than 10 Years of Participation

1. Reduction

If the Member has less than 10 Years of Participation in the Association, the Annual Benefit Limit shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Association, and (ii) the denominator of which is 10.

2. Counting Years of Participation

The Member is credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (i) the Member is credited with at least the number of hours of service or period of service for benefit accrual purposes, required

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under the terms of the Association in order to accrue a benefit for the accrual computation period, and (ii) the Member is included as a Member under the eligibility provisions of the Association for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Member shall equal the portion of a year of benefit accrual service credited to the Member for such accrual computation period. A Member who is permanently and totally disabled within the meaning of § 415(c)(3)(C)(i) of the Code for an accrual computation period shall receive a Year of Participation with respect to that period. In no event shall more than one Year of Participation be credited for any 12-month period. For example, if under the Association, a Member receives 1/10 of a year of benefit accrual service for an accrual computation period for each 200 hours of service, and the Member is credited with 1,000 hours of service for the period, the Member is credited with 1/2 year of participation for purposes of this subsection.

3. Disability and Death Benefits

The reduction described in paragraph 1 of this subsection shall not apply to disability benefits or death benefits as provided in the Code.

C. Reduction for Commencement Before Age 62 For Certain Members

1. No Reduction For Certain Safety Members

The adjustment described in this subsection shall not apply if the Member's benefit is based on at least 15 years as a full-time employee of any police or fire department of an Employer that maintains the Association or as a member of the armed forces of the United States. Such police or fire department must be organized to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such Employer.

2. Reduction For Benefits Commencing Before Age 62

If the Member's benefits commence before the Member attains age 62, the Annual Benefit Limit is equal to the lesser of:

- a. The Annual Benefit Limit reduced in accordance with Code section 415(b) to its actuarial equivalent using:
 - i. The Applicable Mortality Table; and
 - ii. A 5% interest rate; or
- b. The Annual Benefit Limit multiplied by the ratio of the immediately commencing Straight Life Annuity under the Association at the Member's Annuity Starting Date to the annual amount of the Straight Life Annuity under the Association commencing at age 62, both determined without applying the limitations of this regulation.

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3. Probability of Death

No adjustment will be made to the annual benefit limit to reflect the probability of death between the Annuity Starting Date and age 62 unless the Member's benefit is forfeited at death before the Annuity Starting Date.

4. Death and Disability

The adjustment described in paragraph 1 of this subsection shall not apply to disability benefits or death benefits.

D. Increase for Commencement After Age 65

1. Increase For Benefits Commencing After 65

If the Member's benefits commence after the Member attains age 65, the Annual Benefit Limit is equal to the lesser of:

- a. The Annual Benefit Limit increased in accordance with Code section 415(b) to its actuarial equivalent using:
 - i. The Applicable Mortality Table; and
 - ii. A 5% interest rate; or
- b. The Annual Benefit Limit multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the Association at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Association at age 65, both determined without applying the limitations of this regulation. For this purpose, the adjusted immediately commencing Straight Life Annuity under the Association at the Member's Annuity Starting Date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under the Association at age 65 is the annual amount of such annuity that would be payable under the Association to a hypothetical Member who is age 65 and has the same accrued benefit as the Member.

2. Probability of Death

No adjustment will be made to the Annual Benefit Limit to reflect the probability of death between age 65 and the Annuity Starting Date unless the Member's benefit is forfeited at death before the Annuity Starting Date.

E. Minimum Benefit Permitted

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The benefit otherwise accrued or payable to a Member under the Association is treated as not exceeding the Annual Benefit Limit if:

1. Minimum Benefit Limit Allowed

The sum of the retirement benefits payable under any form of benefit with respect to the Member for the Limitation Year or for any prior Limitation Year under the Association and all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Member's Employer does not exceed \$10,000 multiplied by a fraction – (i) the numerator of which is the Member's number of years (or part thereof, but not less than one year) of service (not to exceed 10) with the Member's Employer or an Affiliated Employer, and (ii) the denominator of which is 10; and

2. Condition

The Member has never participated in any qualified defined contribution plan maintained by the Member's Employer or an Affiliated Employer.

SECTION III. PARTICIPATION IN MULTIPLE DEFINED BENEFIT PLANS

A. Application of Limit to Aggregate Benefits

If the Member is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Member's Employer, the sum of the participant's Annual Benefits from all such plans may not exceed the Annual Benefit Limit.

B. Multiple Plan Benefit Limit Coordination

Where the Member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Annual Benefit Limit applicable at that age, the benefits accrued under all such other plans shall be reduced first in order to avoid exceeding the limit and shall be reduced under the Association only to the extent that the reduction under such other plans is insufficient to avoid exceeding the limit.

SECTION IV. MULTIPLE EMPLOYER PLAN

Benefits attributable to the Member attributable to all of the Employers participating in the Association are taken into account for purposes of applying the Annual Benefit Limit.

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SECTION V. GRANDFATHER RULES

A. Annual Benefit Limit Equals Accrued Benefit

Notwithstanding anything herein to the contrary, the Annual Benefit Limit with respect to a Qualified Member shall not be less than the accrued benefit of the Qualified Member under the Association determined without regard to any amendment made after October 14, 1987.

B. Qualified Participant

For purposes of this section, the term "Qualified Member" means a Member who first became a Member in the Association before January 1, 1990.

C. Election

Pursuant to Section 31899 et. seq. of the California Government Code, the election has been made to have this Section apply.

SECTION VI. PURCHASE OF PERMISSIVE SERVICE CREDIT

A. General Rule

To the extent a Member is not prohibited by the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), if a Member makes one or more contributions to the Association to purchase Permissive Service Credit under the Association, then the requirements of this regulation will be treated as met only if:

1. The requirements of this regulation are met, determined by treating the accrued benefit derived from all such contributions as an Annual Benefit for purposes of this regulation; or
2. The requirements of the Association's regulation governing the limits on annual additions applicable to defined contribution plans are met by treating all such contributions as annual additions.

B. Permissive Service Credit

1. Permissive Service Credit Defined

For purposes of this Section, "Permissive Service Credit" means:

- a. Credit recognized by the Association for purposes of calculating a Member's benefit under the Association;
- b. Credit which such Member has not received under the Association; and
- c. Credit which the Member may receive only by making a voluntary additional contribution in an amount determined under the

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Association, which does not exceed the amount necessary to fund the benefit attributable to the service credit purchased.

Permissive Service Credit also includes service credit for periods for which there is no performance of service and, notwithstanding subparagraph b of this paragraph, may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the Association, but only to the extent not prohibited by PEPRA.

2. Limitation on Nonqualified Service Credit

The Association will fail to satisfy the requirements of this regulation if

- a. More than 5 years of Nonqualified Service Credit is taken into account for purposes of this Section; or
- b. Any Nonqualified Service Credit is taken into account under this Section before the Member has at least 5 Years of Participation under the Association.

3. Nonqualified Service Credit

For purposes of paragraph 2 of this subsection, the term "Nonqualified Service Credit" means permissive service credit other than that allowed with respect to:

- a. Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, an State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of repayment described in subsection C of this Section);
- b. Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (a) of this paragraph) of an educational organization described in Code section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,
- c. Service as an employee of an association of employees who are described in subparagraph (a) of this paragraph; or
- d. Military service (other than qualified military service under Code section 414(u)) recognized by the Association.

In the case of service described in subparagraphs a, b or c of this paragraph, such service will be nonqualified service if recognition of such

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service would cause a Member to receive a retirement benefit for the same period of service under more than one plan.

Even if any proposed service credit purchase meets the above requirements, to the extent such proposed service credit purchase is prohibited under the terms of PEPRA, the Association will not process such service credit purchase.

4. Trustee-to-Trustee Transfers

In the case of a trustee-to-trustee transfer to the Association to which Code section 403(b)(13)(A) or 457(e)(17)(A) applies, (without regard to whether the transfer is made from a plan that is maintained by the same Employer):

- a. The limitations of paragraph 2 of this subsection shall not apply in determining whether the transfer is for the purchase of Permissive Service Credit; and
- b. The distribution rules applicable under the Code to the Association shall apply to such amounts and any benefits attributable to such amounts.

C. Repayment of Cashouts

In the case of any repayment of contributions (including interest) to the Association with respect to an amount previously refunded upon a forfeiture of service credit under the Association or under another governmental plan maintained by a state or local government employer within the State of California, any such repayment shall not be taken into account for purposes of this regulation.

SECTION VII. DEFINITIONS

A. Annual Benefit

"Annual Benefit" means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided in Section II.A.5, where a benefit is payable in a form other than a Straight Life Annuity, the benefit shall be adjusted (solely for purposes of applying the limits of Code section 415 and of this regulation) pursuant to Section II.A.7 to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month.

B. Annual Benefit Limit

"Annual Benefit Limit" means the limit described in Section II.A.1 of this regulation.

C. Annuity

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"Annuity" for purposes of this regulation does not mean "annuity" as defined in the CERL but instead means a retirement benefit that is payable by the Association, as provided in section 415 of the Code.

D. Annuity Starting Date

"Annuity Starting Date" means the first day of the first period for which a retirement benefit is payable as an annuity or, in the case of a retirement benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Member to payment under the Association.

E. Applicable Interest Rate

"Applicable Interest Rate" means the "applicable interest rate" defined in section 417(e)(3)(C) of the Code and shall be such rate of interest determined as of the first month preceding the stability period, which shall be the month containing the Annuity Starting Date for the distribution and for which the Applicable Interest Rate shall remain constant.

F. Applicable Mortality Table

"Applicable Mortality Table" means the "applicable mortality table" defined in section 417(e)(3)(B) of the Code.

G. Employer

"Employer" means the participating County or other governmental employer that participates in the Association and employs the Member. The term "Employer" also includes any Affiliated Employer. Solely to the extent provided in the Code with respect to public agencies, the term "Affiliated Employer" means all members of a controlled group of an Employer.

H. Limitation Year

"Limitation Year" means the calendar year.

I. Spouse

Effective June 26, 2013, consistent with Federal tax rules, the term "Spouse" means a person who is lawfully married under California law, including marriages recognized under California Family Code section 308 that were entered into in another jurisdiction (another state, the District of Columbia, a United States territory or a foreign jurisdiction) which also include marriages of same-sex individuals that were validly entered into in another jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a jurisdiction that does not recognize the validity of same-sex marriage. In accordance with Federal tax rules, the term "Spouse" does not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under the law of another jurisdiction that is not denominated as a marriage under the laws of that state (whether opposite-sex or same-sex relationships).

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J. Straight Life Annuity

"Straight Life Annuity" means an Annuity payable in equal installments for the life of the member and terminating on the Member's death.

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REGULATIONS FOR IRC SECTION 415(c)

DEFINED CONTRIBUTION LIMITS

SECTION I. PURPOSE AND SCOPE

In accordance with section 31525 and section 31899 et. seq. of the California Government Code, the regulations set forth herein are effective as of [_____], and reaffirm and clarify the existing practices of the Mendocino County Employees' Retirement Association (the "Association") with respect to the limits on annual additions under section 415(c) of the Internal Revenue Code (the "Code"). For these regulations, the Code includes Treasury regulations issued under section 415(c). To the extent there is a conflict between these regulations and the Code, the Code governs.

The Association may establish reasonable procedures for complying with the limits on annual additions under section 415(c) of the Code that it deems necessary or advisable for complying with applicable tax laws or for administrative purposes.

Capitalized terms used in this Regulation are defined in Section III. Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. ANNUAL ADDITIONS LIMITATION

A. Annual Additions Limit, In General

Notwithstanding anything to the contrary contained in the Association, the total Annual Additions allocated to a Member's Account under the Association, when added to the Annual Additions allocated to the Member's accounts under all other Aggregated Plans maintained by the Employer or an Affiliate for any Limitation Year, shall not exceed the Maximum Permissible Amount; provided, however, that the limit described in III.G.2 shall not apply to an individual medical benefit account (as defined in section 415(l) of the Code).

SECTION III. DEFINITIONS

Solely for purposes of this regulation, the following definitions shall apply:

A. Account

"Account" means the separate Member account provided under the Association for benefits that are separate and apart from the retirement benefits (annuity and pension) otherwise provided under the CERL.

B. Affiliate

Solely to the extent provided in the Code with respect to public agencies, the term "Affiliate" means all members of a controlled group of an Employer.

C. Aggregated Plan

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"Aggregated Plan" means any defined contribution plan which is aggregated with the Association pursuant to Section III of this regulation.

D. Annual Additions

"Annual Additions" means the sum of the following amounts credited to a Member's Accounts under the Association and any Aggregated Plans for the Limitation Year:

1. Employer contributions allocated to the Member's Account that is separate and apart from any pension or annuity benefits provided under the CERL;
2. Employee contributions (after-tax), including mandatory contributions (as defined in section 411(c)(2)(C) of the Code and Treasury regulations issued thereunder), as well as voluntary employee contributions used to purchase permissive service credit (as defined in Code section 415(n)(3)), to the extent such service credit purchase is not prohibited under PEPRA, if an election is made to treat those amounts as Annual Additions in the year contributed pursuant to Code section 415(n)(1).
3. Forfeitures;
4. Amounts allocated to the Member's individual medical account (within the meaning of section 415(l)(2) of the Code), which is part of a pension or annuity plan maintained by the Employer or Affiliate, except that such amounts are not included in Annual Additions for purposes of applying the 100% of compensation limit.

The term "Annual Additions" excludes:

1. Repayments of cash-outs as described in Code section 415(k)(3) (for example, to purchase restoration of an accrued benefit that was lost when employee contributions were previously cashed out) for the limitation year in which the restoration occurs;
2. Catch-up contributions made in accordance with Code section 414(v);
3. Restorative payment described in Treasury regulations section 1.415(c)-1(b)(2)(ii)(C);
4. Excess deferrals that are distributed in accordance with Treasury regulations section 1.402(g)-1(e)(2) or (3);
5. Rollover contributions (as described in Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d) and 457(e)(16) of the Code);
6. Loan repayments;
7. Employee contributions to a qualified cost-of-living arrangement described in Code section 415(k)(2)(B);

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8. Employee contributions picked up by the Employer under Code section 414(h)(2);
9. Make-up contributions attributable to a period of qualified military service, as defined in Code section 414(u), with respect to the year in which the contribution is made (but not with respect to the year to which the contribution relates); and
10. Employee contributions to purchase permissive service credit (as defined in Code section 415(n)(3)) to the extent such service credit purchase is allowed under PEPRA and if an election is made to treat the accrued benefit derived from all such contributions as an annual benefit subject to the limits of Code section 415(b).

E. Employer

"Employer" means the participating County or other governmental employer that participates in the Association and employs the Member.

F. Limitation Year

"Limitation Year" means the calendar year.

G. Maximum Permissible Amount

"Maximum Permissible Amount" means the lesser of:

1. \$52,000 (for 2014), as adjusted for increases in the cost-of-living under section 415(d) of the Code; or
2. 100 percent of the Member's Total Compensation for the Limitation Year.

H. Severance From Employment

"Severance From Employment" means the Member ceases to be an employee of the Employer. A Member does not have a Severance From Employment if, in connection with a change of employment, the Member's new employer maintains the Association with respect to the Member.

I. Total Compensation

"Total Compensation" means all items of remuneration described in paragraph (1) and excludes all items of remuneration described in paragraph (2), below.

1. Items Included

Total Compensation includes all of the following items of remuneration for services:

- a. A Member's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an

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amount is paid in cash) for personal services actually rendered in the course of employment with the Employer and any Affiliate to the extent that the amounts are includible in gross income (or to the extent that amounts would have been includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements, or other expense allowances under a non-accountable plan, as described in Treasury regulations section 1.62-2(c);

- b. Amounts described in Code section 104(a)(3), 105(a), or 105(h), but only to the extent that these amounts are includible in the gross income of the Member;
- c. Amounts paid or reimbursed by the Employer or an Affiliate for moving expenses incurred by a Member, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the Member under Code section 217;
- d. The amount includible in the gross income of an Member upon making the election described in Code section 83(b);
- e. Amounts that are includible in the gross income of a Member under the rules of Code section 409A or Code section 457(f)(1)(A), or because the amounts are constructively received by the Member; and
- f. An amount that is excludable under Code section 106 that is not available to a Member in cash in lieu of group health coverage because the Member is unable to certify that he or she has other health coverage; provided, however, that the Employer does not request or collect information regarding the Member's other health coverage as part of the enrollment process for the health plan.

2. Items Excluded

The following items are excluded from Total Compensation:

- a. Employer contributions (other than elective contributions described in Code section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) to a deferred compensation plan (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent such contributions are not includable in the Member's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a deferred compensation plan (whether or not qualified) other than amounts received during the year by a Member pursuant to a nonqualified unfunded

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deferred compensation plan to the extent includible in gross income;

- b. Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are excludible from the gross income of the Member, and are not salary reduction amounts that are described in Code section 125);
- c. Other items of remuneration that are similar to any of the items listed in a and b, above.

3. Timing

- a. In order to be taken into account for a Limitation Year, Total Compensation must be paid or made available (or, if earlier, includible in the gross income of the Member) during the Limitation Year. For this purpose, compensation is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code section 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b)).
- b. In order to be taken into account for a Limitation Year, Total Compensation must be paid or treated as paid to the Member prior to the Member's Severance From Employment with the Employer; provided, however, that Total Compensation includes amounts paid to the Member by the later of 2½ months after Severance From Employment or the end of the Limitation Year if the amounts are regular compensation for services during the Member's regular working hours, compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation that absent a Severance From Employment would have been paid to the Member while the Member continued in employment with the Employer.
- c. Total Compensation does not include amounts paid after Severance From Employment that are severance pay, unfunded nonqualified deferred compensation, or any other payment that is not described in the preceding paragraph, even if paid within 2½ months, except for:
 - i. Payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service to the extent that these payments do not exceed the amounts that the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service; and

Mendocino County Employees' Retirement Association

- ii. Payments to a Member who is permanently and totally disabled; provided, however that salary continuation applies to all Members who are permanently and totally disabled for a fixed or determinable period. For this purpose, a Member is permanently and totally disabled only if the Member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months.

4. Limit

A Member's Total Compensation shall not include compensation in excess of the limitation of Code section 401(a)(17) that is in effect for the calendar year in which such Limitation Year begins.

SECTION III. AGGREGATION WITH OTHER DEFINED CONTRIBUTION PLANS

All defined contribution plans (as defined in section 1.415(c)-1(a)(2) of the Treasury regulations and whether or not terminated) maintained by the Employer or an Affiliate shall be aggregated with the Association, and all plans so aggregated shall be considered as one plan in applying the limitations of this regulation.

SECTION IV. COORDINATION WITH OTHER DEFINED CONTRIBUTION PLANS

In the event that a Member participates in another defined contribution plan of the Employer or of an Affiliate that is a tax-qualified defined contribution plan, contributions or allocations that would otherwise be made on behalf of the Member to the Association shall be reduced to the extent necessary to avoid exceeding the limitations of this regulation when contributions are aggregated as described above.

SECTION V. CORRECTION

Any excess Annual Additions shall be corrected using the methods specified in guidance promulgated by the Secretary of the Treasury describing the procedures for correcting excess Annual Additions under the Employee Plans Compliance Resolution System ("EPCRS") or its successor.

**MENDOCINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**

**REGULATIONS FOR
IRC CODE § 401(a)
DISTRIBUTION RESTRICTIONS**

Mendocino County Employees' Retirement Association

REGULATIONS FOR IRC SECTION 401(a) RETURN TO WORK AND SEPARATION FROM SERVICE

SECTION I. PURPOSE AND SCOPE

In accordance with section 31485.15 and section 31525 of the California Government Code, the regulations set forth herein are effective as of December 31, 2014, and reaffirm and clarify the existing practices of the Mendocino County Employees' Retirement Association (the "Association") with respect to the return to work of retired Members and a bona fide separation from service prior to such return to work applicable for the Association in accordance with the Internal Revenue Code (the "Code"). For these regulations, Code includes the Treasury regulations issued under the Code.

These regulations are intended to be in accordance with the Code and the applicable Treasury regulations. To the extent there is a conflict between these regulations and the Code and Treasury regulations, the applicable federal law will govern.

The Association may establish any reasonable procedures dealing with the return to work of Members following retirement under the Association and the requirement for a bona fide separation of service that it deems necessary or desirable for complying with applicable tax laws or for administrative purposes.

Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. RETURN TO WORK AND BONA FIDE SEPARATION FROM SERVICE

For purposes of employment with the County or a participating employer under the Association after retirement for service, a Member who has not attained normal retirement age shall have a bona fide separation from service to the extent required by section 401(a) of Title 26 of the United States Code. A bona fide separation from service is defined as follows:

1. The Member has not entered into any predetermined agreement (either written or unwritten) with the County or a participating employer under the Association prior to retirement to return to work for a participating employer under the Association after retirement, regardless of the length of the separation.
2. Prior to entering into an agreement to return or returning to employment with the County or a participating employer under the Association while retired, the Member must have a separation from service of at least the greater of (a) any required separation from service prior to return to work required under the terms of the California Public Employees' Pension Reform Act of 2013 or (b) a 60 calendar day separation from service.

Mendocino County Employees' Retirement Association

3. The Member may be employed by the County or a participating employer under the Association prior to the time in sections 1 and 2 for emergency situations as defined in Government Code section 8558.

MENDOCINO COUNTY EMPLOYEES'

RETIREMENT ASSOCIATION

CODE § 401(a)(36)

NORMAL RETIREMENT AGE

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

REGULATIONS FOR IRC SECTION 401(a)

NORMAL RETIREMENT AGE

SECTION I. PURPOSE AND SCOPE

In accordance with section 31485.15 and section 31525 of the California Government Code, the regulations set forth herein are effective as of December 31, 2014, and reaffirm and clarify the existing practices of the Mendocino County Employees' Retirement Association (the "Association") with respect to the normal retirement age applicable for the Association in accordance with the Internal Revenue Code (the "Code"). For these regulations, Code includes the Treasury regulations issued under the Code.

These regulations are intended to be in accordance with the Code and the applicable Treasury regulations. To the extent there is a conflict between these regulations and the Code and Treasury regulations, the applicable federal law will govern.

The Association may establish any reasonable procedures for determining and applying the normal retirement age requirements that it deems necessary or desirable for complying with applicable tax laws or for administrative purposes.

Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. NORMAL RETIREMENT AGE

1. Normal Retirement Age for general members is age 62 years, or if later, the date at which a Member vests in his or her right to receive a monthly retirement allowance from the Association. In accordance with the CERL, normal retirement age is not later than age 70 years.
2. Normal Retirement Age for safety members is age 50 years, or if later, the date at which a Member vests in his or her right to receive a monthly retirement allowance from the Association. In accordance with the CERL, normal retirement age is not later than age 70 years.
3. The normal retirement age for general Members is based on safe harbor provisions in Treasury Regulation Section 1.401(a)-1(b)(2)(ii). The normal retirement age for Safety Members is based on safe harbor provisions in Treasury Regulation Section 1.401(a)-1(b)(2)(v) applicable to qualified public safety employees.
4. The Board of Retirement for the Association may change the normal retirement age determined herein to the extent required to comply with section 401(a) of Title 26 of the United States Code or for any other reasons determined by the

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Board. The normal retirement age determined herein does not create any "vested rights" under California or federal law including but not limited to the contracts clause of the California Constitution.

Resolution No: 11-1019

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF RETIREMENT
ADOPTING MODEL REGULATIONS FOR A 401(h) ACCOUNT CONSISTENT
WITH ITS VOLUNTARY CORRECTION PROGRAM FILING

WHEREAS, the Internal Revenue Service (IRS) is conducting a review of retirement systems nationwide, including the retirement systems governed by the County Employees Retirement Law of 1937 (CERL, or 1937 Act); and

WHEREAS, the Mendocino County Employees' Retirement Association (MCERA) is governed by the 1937 Act and subject to said review; and

WHEREAS, the Board of Retirement engaged the law firm of Hanson Bridgett to assist in preparing an application for a Determination Letter on the qualified status of the plan and a Voluntary Correction Program (VCP) filing; and

WHEREAS, on January 19, 2011, the Board of Retirement approved the submission of a request for a favorable determination letter under Revenue Procedure 2010-6 and for a VCP correction under Revenue Procedure 2008-50; and

WHEREAS, the VCP, TAB Q, contained the correction, "MCERA will adopt the model regulations for a 401(h) account in TAB M. Additionally, the County will contribute to that account in accord with section 401(h) to pay retiree health benefits up to August 1, 2011. MCERA will also comply with CERL Section 31592.4 to facilitate those contributions."

NOW, THEREFORE, BE IT RESOLVED that the Board of Retirement adopts the model regulations for a 401(h) account attached and incorporated herein for the purposes of compliance with MCERA's VCP filing and for establishing a procedure that is consistent with Internal Revenue Code 401(h) and CERL Section 31592.4.

Upon motion by Trustee Kendall Smith, seconded by Trustee Randall Goodman, the foregoing Resolution is hereby approved and adopted by the Mendocino County Board of Retirement the 19th day of October 2011 by the following roll call vote:

Ayes:	<u>7</u>
Noes:	<u>0</u>
Absent:	<u>3</u>

Shavi Schapmire FOR
Bob Mirata, Chair 10-19-11
Mendocino County Board of Retirement

Attest: Judy Zeller
Clerk to the Board

Judy Zeller

**MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
REGULATIONS FOR IRC SECTION 401(h)
MEDICAL BENEFITS ACCOUNTS**

SECTION I. GENERAL RULES

A. Purpose and Effective Date

In accordance with sections 31691 and 31694 of the California Government Code, the regulations set forth herein are effective as of October 19, 2011 and reaffirm and clarify the existing practices of the Mendocino County Employees Retirement Association (the "Association") with respect to the requirements under section 401(h) of the Internal Revenue Code (the "Code").

These regulations are intended to be in accordance with the Code and the applicable Treasury Regulations. To the extent there is a conflict between these regulations and the Code and Treasury regulations, the applicable federal law will govern.

The Association may establish reasonable procedures for complying with the requirements under section 401(h) of the Code that it deems necessary or desirable to comply with applicable tax laws or for administrative purposes.

**SECTION II. COMPLIANCE WITH THE TAX CODE SECTION 401(h)
REQUIREMENTS**

A. General Rule

All retiree medical benefit payments made by the system will comply with all applicable federal laws, including Code § 401(h). To the extent there may be a conflict between these regulations and Code § 401(h) or the Treasury Regulations issued hereunder, the Code and Treasury Regulations shall govern.

B. Compliance with Provisions of the Code

1. The Board of Supervisors must specify the medical benefits which will be available and the Board of Retirement must set out the amount that will be paid for those benefits.
2. Medical benefits must be subordinate to the retirement benefits, when added to any life insurance benefits. Contributions shall be limited to the extent necessary to ensure that the retiree health benefits are subordinate to the retirement benefits provided by the system as required by Code § 401(h).
3. A separate account must be maintained for contributions to fund the medical benefits.

4. Amounts credited to the 401(h) account may be invested with other system funds set aside for retirement purposes, without identification of which investments are allocable to each account. However, earnings on each account shall be allocated to each in a reasonable manner.
5. Amounts contributed for medical benefits must be reasonable and ascertainable. The county will, at the time it makes a contribution to the system, designate in writing to the system that portion of the contribution allocable to the 401(h) account to be used solely for health benefits.
6. No part of the medical benefits account may be used for or diverted to any purpose other than providing medical benefits and paying necessary or appropriate expenses for the administration of the medical benefits account.
7. No retiree health benefits provided under the 401(h) account will discriminate in favor of highly compensated employees.
8. Any amounts remaining in the medical benefits account after satisfaction of all medical benefits liabilities for all members, spouses and dependents must be returned to the employer.
9. If any member's interest in the medical benefits account is forfeited prior to plan termination, an amount equal to the forfeiture must reduce employer contributions to fund the account.
10. Separate accounts are not required for key employees because no member of the system is a key employee under the definitions of the Code.

C. Compliance with the CERL

1. In accordance with Section 31592.4 of the CERL, amounts may be credited from the excess earnings of the system that are available at the end of the fiscal year to a county advance reserves account which is used to pay annuity benefits (but not to pay health benefits), and such amounts will be treated as contributions by the county to the system. Amounts shall be credited to the county advance reserves from the system excess earnings only to the extent that in the immediately succeeding fiscal year the county transfers equal dollar amounts to the 401(h) account. In this way, both the requirements of the Code and the CERL will be met so retirees can receive tax-free health benefits.
2. To the extent required by the CERL, the 401(h) account shall be deemed to be a county advance reserves account.

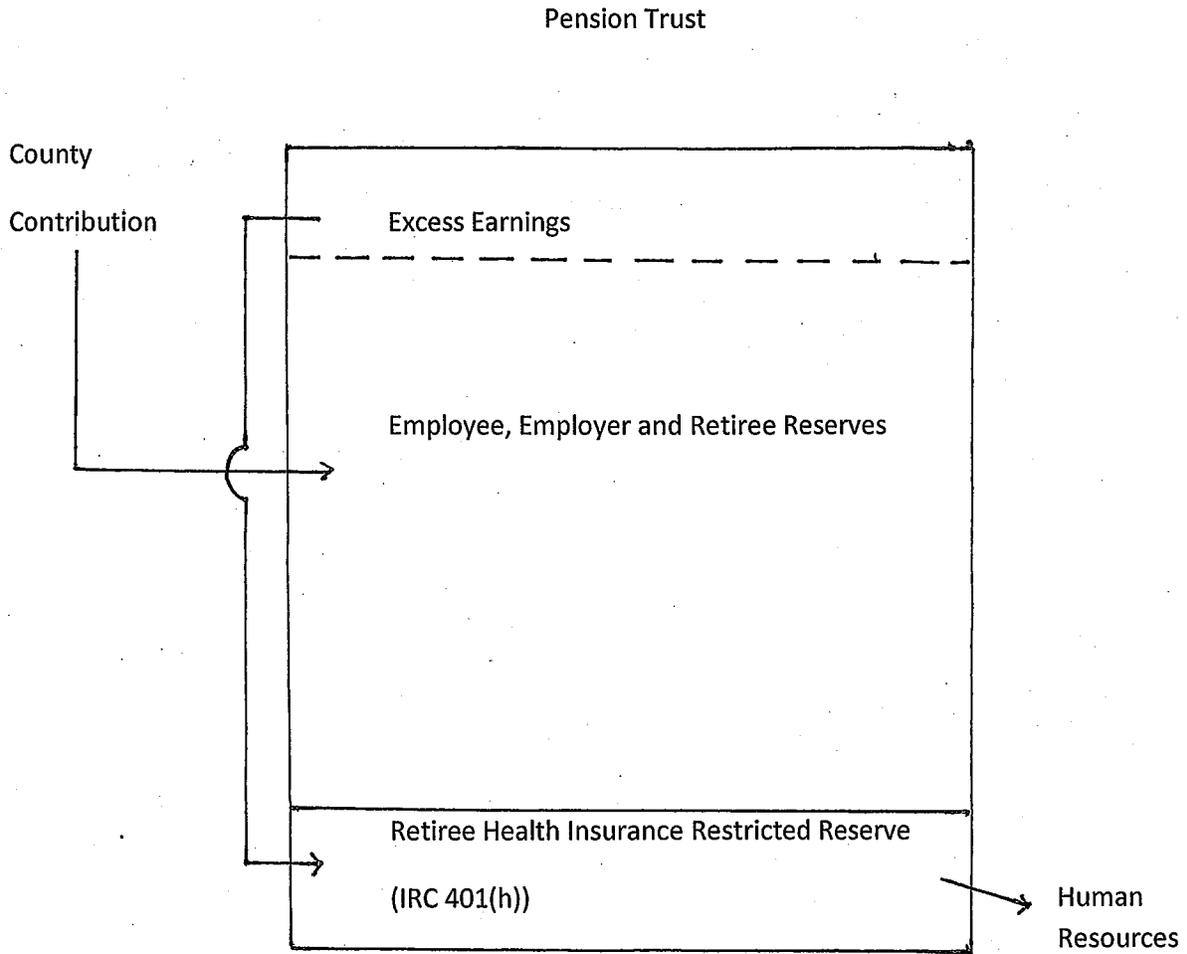
SECTION III. DEFINITION OF COUNTY ADVANCE RESERVE

County advance reserve means the account which records contributions to the system made by the county and additions to and subtractions from that account. For purposes of this regulation county advance reserve includes a similar

reserve, if any, held for a district that contributes to the system. A county advance reserve account records a portion of all of the assets held by the system solely to provide for retirement benefits (including disability, death and other ancillary benefits) of all Members and to provide for reasonable administrative expenses, along with other accounts that record assets used solely for these purposes including but not limited to Member contribution accounts and other reserve accounts. A transfer between any of these accounts is a transfer for recording purposes only and is not a transfer between accounts that are used for retirement benefits and for any other purpose.

Historical Funding of Retiree Health Care

(Utilizing Excess Earnings as then understood under Government Code Sections 31592.2, 31592.4 and 31691, and actuarial direction, and as generally authorized under BOR Resolution #98-002, BOS Resolution #98-147 and then current MCERA bylaws approved by both the BOR and BOS.)



VCP and Model Regulation Funding of Retiree Health Care

(Revised per the VCP and adoption of the 401(h) model regulations by the BOR, subject to federal subordination limits, only upon annual BOR determination of excess earnings and explicit direction from the BOS to the BOR)

