AGENDA

REGULAR MEETING OF THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

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

9:00 A.M., THURSDAY, SEPTEMBER 10, 2015

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF MINUTES

A. Approval of the Minutes of the Regular Meeting of August 13, 2015

IV. REPORT ON CLOSED SESSION ITEMS

V. OTHER COMMUNICATIONS

A. For Information

1. July 2015 All Stars

2. Chief Executive Officer's Report
(Memo dated September 1, 2015)

VI. PUBLIC COMMENT

VII. NON-CONSENT AGENDA

A. Recommendation as submitted by Steven P. Rice, Chief Counsel and Cassandra Smith, Director, Retiree Health Care: That the Board approve and authorize LACERA staff to submit a comment letter in response to IRS Notice 2015-52, which concerns implementation of the Affordable Care Act's excise tax on high cost employer-sponsored health coverage.
(Memo dated August 31, 2015)

VII. NON-CONSENT AGENDA (Continued)

B. Recommendation as submitted by Joseph Kelly, Chair, Operations Oversight Committee: That the Board approves the purchase of Fiduciary Liability Insurance for the October 6, 2015 renewal. (Memo dated August 24, 2015)

C. Recommendation as submitted by Les Robbins, Chair, Insurance, Benefits and Legislative Committee: That the Board adopt a "Support" position on U.S. Senate Bill 1651, which would enact the "Social Security Fairness Act of 2015." (Memo dated August 28, 2015)

D. For Information Only as submitted by Beulah S. Auten, Chief Financial Officer, regarding the 2016 STAR COLA Program. (Memo dated August 31, 2015)

VIII. EXECUTIVE SESSION

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

1. Clark v. LACERA, et al., etc.
Los Angeles Superior Court, Case No. BS144144

B. Conference with Legal Counsel – Initiation of Litigation
Pursuant to Paragraph (4) of Subdivision (d) of California Government Code Section 54956.9

1. Number of Potential Cases: 1

C. Pursuant to Government Code Section 54957 - Public Employee Performance Evaluation:

1. Performance Evaluation
Title: Chief Executive Officer

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

X. ADJOURNMENT

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

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

MINUTES OF THE REGULAR MEETING OF THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

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

9:00 A.M., THURSDAY, AUGUST 13, 2015

PRESENT: Alan Bernstein, Acting Chair

Anthony Bravo

Yves Chery

Vivian H. Gray (Arrived at 9:02 a.m.)

Joseph Kelly

David L. Muir (Alternate Retired)

Ronald A. Okum

Les Robbins

ABSENT: Shawn R. Kehoe, Chair

William de la Garza, Secretary

William Pryor (Alternate Member)

STAFF ADVISORS AND PARTICIPANTS

Gregg Rademacher, Chief Executive Officer

JJ Popowich, Assistant Executive Officer

Steven Rice, Chief Counsel

Johanna Fontenot, Senior Staff Counsel

STAFF ADVISORS AND PARTICIPANTS (Continued)

Bernie Buenaflor, Division Manager
Claims Processing Division

Christopher W. Waddell, Senior Attorney
Olson, Hagel & Fishburn LLP

I. CALL TO ORDER

The meeting was called to order by Acting Chair Bernstein at 9:00 a.m., in the Board Room of Gateway Plaza.

II. PLEDGE OF ALLEGIANCE

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

III. APPROVAL OF MINUTES

A. Approval of the Minutes of the Regular Meeting of July 9, 2015

Mr. Okum made a motion, Mr. Chery seconded, to approve the minutes of the regular meeting of July 9, 2015. The motion passed unanimously.

IV. REPORT ON CLOSED SESSION ITEMS

There was nothing to report at this time.

V. OTHER COMMUNICATIONS

A. For Information

1. June 2015 All Stars

V. OTHER COMMUNICATIONS (Continued)

Mr. Popowich announced the eight winners for the month of June; Fabio Ramirez, Samantha Garcia, John Nogales, Wenona Myers, Donna Hansen, Ana Ronquillo, Andrea Ellison, and Christine Tung for the Employee Recognition Program and Joseph Kelly for the Webwatcher Program. Jay Fullwood, Johnathan Silva, Nathan Amick, and David Chu were the winners of LACERA's RideShare Program.

2. Chief Executive Officer's Report
(Memo dated August 4, 2015) (Vivian Gray arrived at 9:02 a.m.)

Mr. Rademacher provided a brief overview of his Chief Executive Officer's Report with a quick update on what transpired at the previous Board of Investments meeting. (Board of Investments minutes are available to view on LACERA's Website www.lacera.com.)

Mr. Rademacher shared his experience of attending the SACRS Public Pension Investment Management Program in Berkeley, CA. In addition, he provided an update about the CIO search announcing that Egon Zehnder has been hired as the executive recruiter. Lastly, Mr. Rademacher shared his experience and thanked Cassandra Smith for providing an educational session at the Los Angeles County Budget Deputy meeting.

VI. PUBLIC COMMENT

There were no requests from the public.

VII. NON-CONSENT AGENDA

A. Recommendation as submitted by Joseph Kelly, Chair, Operations Oversight Committee: That the Board direct staff to 1) Coordinate with the Occupational Health Programs the medical examination and medical advice required under CERL Sections 31680.4 and 31680.8, respectively, for retirees seeking reinstatement to active LACERA membership, and 2) Implement a standardized medical affidavit in conjunction with that process. (Memo dated August 13, 2015)

Mr. Buenaflor was present to answer questions from the Board.

Mr. Chery made a motion, Mr. Okum seconded, to approve the recommendation. The motion passed unanimously.

B. Recommendation as submitted by Gregg Rademacher, Chief Executive Officer: That the Board approve the following:

1) Approve the Chief Executive Officer's recommendation for an Annual Merit Salary Adjustment from a minimum of zero to a maximum of 5 percent for Management Appraisal and Performance Plan Tier I participants effective October 1, 2015 in accordance with program provisions, with the exception of the Chief Executive Officer.

2) Approve reassigning Legal Services and Disability Litigation Division counsel positions participating in the LACERA Standardized Salary Schedule to the LACERA Management Appraisal and Performance Plan Tier II, effective October 1, 2015.

3) Approve reassigning the following classified and unclassified positions participating in the Management Appraisal and Performance Plan Tier I to Tier II effective January 1, 2016: Assistant Executive Officer, Chief Counsel, Chief Counsel Disability Litigation, Chief Internal Audit, and Retiree Health Care Director.

VII. NON-CONSENT AGENDA (Continued)

4) Clarify language in the salary ordinance section 6.127.040 to state the granting authority for Tier I merit salary adjustments.

5) Approve an amendment to the salary ordinance to allow unclassified positions in the investment office to be eligible for the Chartered Financial Analyst Certification compensation.

6) Direct staff to submit to the Board of Supervisors the necessary salary ordinance language to implement these changes. (Memo dated August 4, 2015)

Mr. Kelly made a motion, Mr. Chery seconded, to approve the recommendation with the revision to clarify the language in the salary ordinance to state the granting authority for Tier 1 merit salary adjustments be the Retirement Administrator by changing the ordinance language 6.127.40 Section O. to say "Annually, the Retirement Administrator shall ~~recommend~~ grant a Merit Salary Adjustment, ranging from a minimum of zero to a maximum of 5%." The motion passed unanimously.

C. For Information Only as submitted by Steven Rice, Chief Counsel regarding the Voter Empowerment Act of 2016.

Olson, Hagel & Fishburn LLP
Christopher W. Waddell, Senior Attorney

Mr. Waddell provided a presentation to the Board and answered questions from the Board.

VIII. EXECUTIVE SESSION

A. Conference with Legal Counsel - Anticipated Litigation
Significant exposure to litigation pursuant to Paragraph
(2) of Subdivision (d) of California Government Code Section 54956.9

1. Tort Claim

The Board met in Executive Session pursuant to Paragraph 2 of Subdivision (d) of Government Code Section 54956.9 in which the Board unanimously voted to deny the claim and to place LACERA's insurance company on notice of the claim.

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

Mr. Kelly thanked Mr. Rademacher and staff on their work on Item VII.B.

Green Folder Information (Information distributed in each Board Members Green Folder at the beginning of the meeting)

1. LACERA Legislative Report - Bills Amending CERL/PEPRA
(Dated August 12, 2015)

2. Semi-Annual Interest Crediting for Reserves as of June 30, 2015 (Unaudited)
(For Information Only) (Memo dated July 31, 2015)

3. Litigation Status Report (Confidential Attorney-Client Communication) (For Information Only) (Memo dated August 3, 2015)

X. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 11:53 a.m.

WILLIAM DE LA GARZA, SECRETARY

ALAN BERNSTEIN, ACTING CHAIR

LACERA

September 1, 2015

TO: Each Member
Board of Retirement
Board of Investments

FROM: Gregg Rademacher
Chief Executive Officer

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

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

Recruitment Update

Although we strive to be a premier employer and provide career training and advancement for all employees, we do experience employees leaving for a variety of reasons. In our October 2014 CEO Report we updated your Boards on the status of current recruitment efforts for key management vacancies. Since then we have filled some vacancies, and are currently working on the following:

Chief Investment Officer

Egon Zehnder was chosen as the Executive Search firm. The firm has met with key stakeholders, including LACERA Board members and staff, to create a list of ideal traits the candidate should possess and to determine what skills and competencies the stakeholders feel a candidate needs to be successful in this role. This information will be used to create a "Role Specification", which in turn, will be part of the marketing document to provide to potential candidates. The draft "Role Specification" is scheduled to be completed in early September. Once completed, the Executive Search firm will begin their candidate recruitment.

Member Services Division Manager

Upon the Member Services Manager position becoming vacant in 2012 due to an internal promotion (to a position where the incumbent retired), we took the opportunity to create a multi-year Leadership Development Program as part of our succession planning efforts. The program successfully came to a close in March 2014, and we began an internal recruitment which was expanded to include external candidates in September 2014. This initial recruitment was

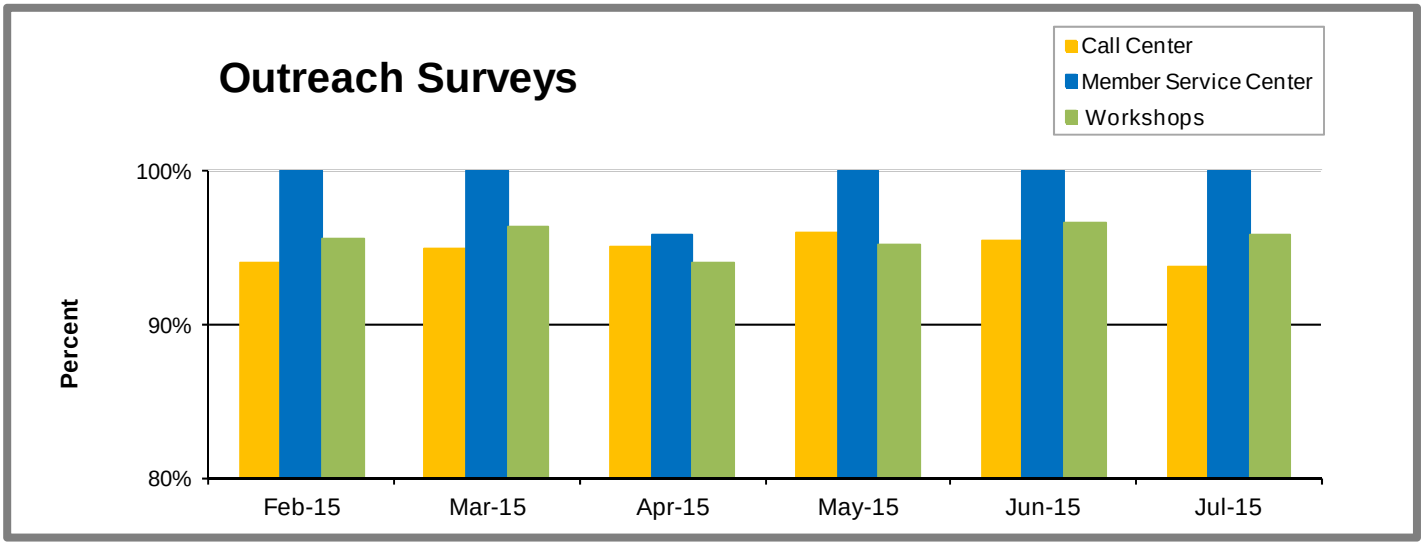
successful in identifying two candidates. However, one of the two candidates elected to take another job before LACERA could make an offer and the second candidate was not the right fit for LACERA. In June of 2015, LACERA selected Alliance, Inc., a well known executive search firm that has run many successful executive and management level searches for many 37' Act systems, including LACERA, to assist us in finding qualified candidates. Alliance identified several potential candidates and two finalists have been selected for further evaluation. LACERA's Human Resources' goal is to conclude the recruitment by October 2015.

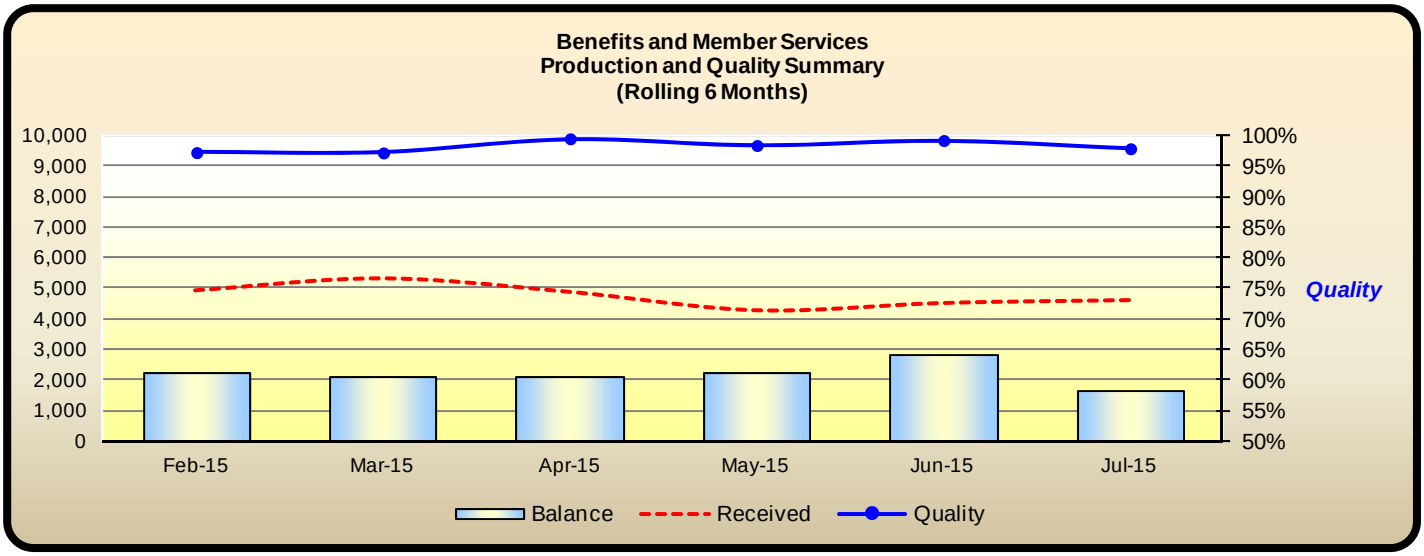
GR: jp
CEO report Sept 2015.doc

Attachments

LACERA's KEY BUSINESS METRICS

OUTREACH EVENTS AND ATTENDANCE					
Type	**# of WORKSHOPS**			**# of MEMBERS**	
	Monthly	**YTD**		**Monthly**	**YTD**
Benefit Information	18	573		18	573
Mid Career	0	0		0	0
New Member	20	382		20	382
Pre-Retirement	8	171		8	171
General Information	0	0		0	0
Retiree Events	0	0		0	0
Member Service Center	Daily	Daily		1,473	1,473
TOTALS	**46**	**1,126**		**1,519**	**2,599**





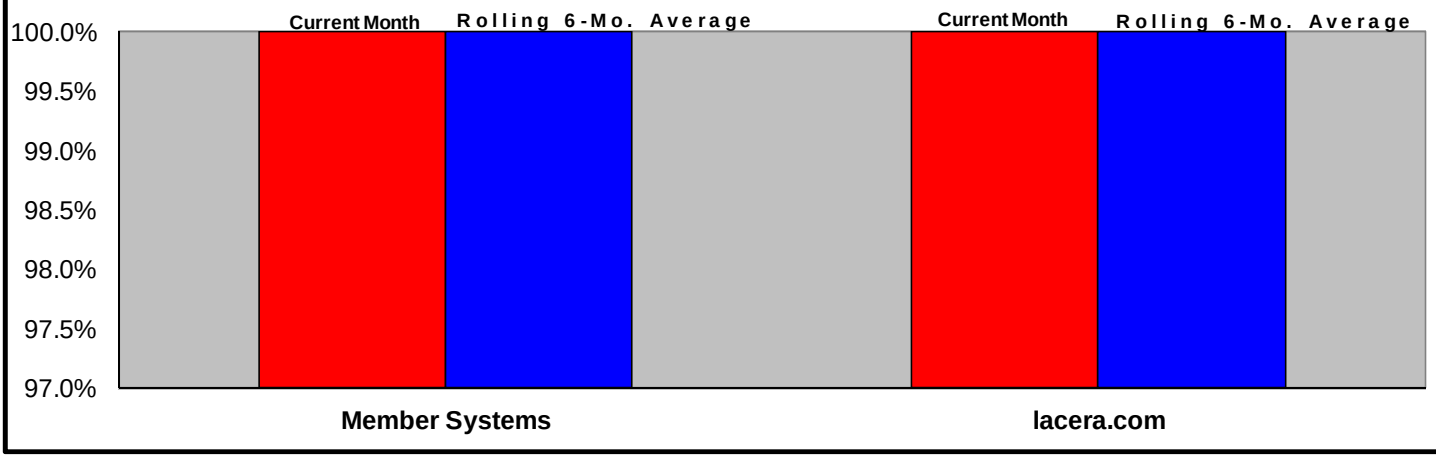
Member Services Contact Center			RHC Call Center	Top Calls
Overall Key Performance Indicator (KPI)	100.87%			
Category	**Goal**	**Rating**		Member Services
Call Center Monitoring Score	95%	97.01%	99%	**1)** Benefit payments: General Inquiry/ Payday
Grade of Service (80% in 60 seconds)	80%	75%	40%	
Call Center Survey Score	90%	93.75%	xxxxx	**2)** Retirement Counseling: Estimate
Agent Utilization Rate	65%	59%	85%	**3)** Address/Name Change: Request.
Number of Calls	10,784		4,683	Retiree Health Care
Calls Answered	10,305		4,116	**1)** Medical Benefits-General Inquiries
Calls Abandoned	479		569	**2)** Medical-New Enroll/Change/Cancel
Calls-Average Speed of Answer	0:00:54		03:05	**3)** Dental/Vision Benefits Gen. Inquiries
Number of Emails	2,277		77	
Emails-Average Response Time	23:57 (min)		1 day	Adjusted for weekends

LACERA's KEY BUSINESS METRICS

Fiscal Years	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Assets-Market Value	$32.0	$35.2	$40.9	$38.7	$30.5	$33.4	$39.5	$41.2	$43.7	$51.1
Funding Ratio	85.8%	90.5%	93.8%	94.5%	88.9%	83.3%	80.6%	76.8%	75.0%	79.5%
Investment Return	11.0%	13.0%	19.1%	-1.4%	-18.2%	11.8%	20.4%	0.3%	12.1%	16.8%

DISABILITY INVESTIGATIONS						
APPLICATIONS	**TOTAL**	**YTD**		**APPEALS**	**TOTAL**	**YTD**
On Hand	467	xxxxxxx		On Hand	194	xxxxxxx
Received	34	34		Received	6	6
Re-opened	0	0		Administratively Closed	3	3
To Board – Initial	36	36		Referee Recommendation	3	3
Closed	6	6		Revised/Reconsidered for Granting	1	1
In Process	**459**	**459**		**In Process**	**193**	**193**

SYSTEMS AVAILABILITY JULY 2015



Active Members as of 9/1/15	
General-Plan A	312
General-Plan B	113
General-Plan C	110
General-Plan D	48,286
General-Plan E	21,908
General-Plan G	10,991
Total General	**81,720**
Safety-Plan A	15
Safety-Plan B	11,689
Safety-Plan C	764
Total Safety	**12,468**
TOTAL ACTIVE	**94,188**

Retired Members/Survivors as of 9/1/15	Retirees	Survivors	Total
General-Plan A	20,047	4,817	24,864
General-Plan B	679	59	738
General-Plan C	422	54	476
General-Plan D	10,789	1,030	11,819
General-Plan E	10,457	819	11,276
General-Plan G	1	0	1
Total General	**42,395**	**6,779**	**49,174**
Safety-Plan A	6,004	1,572	7,576
Safety-Plan B	3,921	209	4,130
Safety-Plan C	1	0	1
Total Safety	**9,926**	**1,781**	**11,707**
TOTAL RETIRED	**52,321**	**8,560**	**60,881**

Retired Members	
Monthly Payroll	239.40 Million
Payroll YTD	239.40 Million
Monthly Added	279
Seamless %	100.00
YTD Added	279
Seamless YTD %	100.00
Direct Deposit	95%

Health Care Program (YTD Totals)	Employer Amount	Member Amount
Medical	36,306,911	3,248,357
Dental	3,043,486	327,349
Med Part B	4,056,106	xxxxxxxxxx
Total Amount	**$43,406,503**	**$3,575,706**

Health Care Program Enrollments	
Medical	46,573
Dental	47,490
Med Part B	29,796
Long Term Care (LTC)	784

Funding Metrics as of 6/30/14	
Employer Normal Cost	9.29%
UAAL	10.04%
Assumed Rate	7.50%
Star Reserve	$614 million
Total Assets	$47.7 billion

Member Contributions as of 6/30/14	
Annual Additions	$439 million
% of Payroll	6.08%

Employer Contributions as of 6/30/14	
Annual Addition	$1,320 million
% of Payroll	19.33%

Date	Conference
September, 2015	
8-10	United Nations Principals of Responsible Investing (UNPRI) PRI in Person 2015 London, England
8-10	Robbins Geller Rudman & Down LLP's 2015 Public Funds Forum Laguna Beach, CA
18	CALAPRS (California Association of Public Retirement Systems) Round Table – Benefits DoubleTree Hotel San Jose
18	CALAPRS (California Association of Public Retirement Systems) Round Table – Trustees DoubleTree Hotel San Jose
27-29	21st Annual Alpha Hedge West Conference San Francisco, CA
28-29	2015 Fortune Brainstorm E: Energy, Technology, and Sustainability Conference Austin, TX
30	International Corporate Governance Network (ICGN) Regional Conference Boston, MA
30-Oct. 2	Council of Institutional Investors (CII) Fall Conference Boston, MA
30-Oct. 2	PREA (Pension Real Estate Association) Annual Institutional Investor Real Estate Conference San Francisco, CA
October, 2015	
18-22	AHIP (America's Health Insurance Plans) Medicare Conference Washington D.C.
19-21	CRCEA (California Retired County Employees Association) Fall Conference Stockton, CA
25-27	Pacific Pension Institute (PPI) Executive Seminar (PES) Tokyo, Japan
25-28	NCPERS (National Conference on Public Employee Retirement Systems) Public Safety Conference Rancho Mirage, CA
26-30	Investment Strategies & Portfolio Management *(prev. Pension Fund & Investment Mgmt.)* Wharton School, University of Pennsylvania
28-30	Pacific Pension Institute (PPI) Asian Pension Fund Roundtable Tokyo, Japan

LACERA

August 31, 2015

TO: Each Member
Board of Retirement

FROM: Steven P. Rice SPR
Chief Counsel

Cassandra Smith CS
Director, Retiree Health Care

FOR: September 10, 2015 Board of Retirement Meeting

SUBJECT: **Proposed Comment Letter to the IRS Concerning ACA Excise Tax Issues**

Recommendation

It is recommended that the Board of Retirement approve and authorize LACERA staff to submit a comment letter in response to IRS Notice 2015-52, which concerns implementation of the Affordable Care Act's excise tax on high cost employer-sponsored health coverage.

Executive Summary

The purpose of the proposed comment letter is to influence the IRS as it drafts the regulations that will govern the excise tax. A draft of the proposed letter is attached as Exhibit A. A copy of IRS Notice 2015-52, to which the letter responds, is attached as Exhibit B. Specifically, the proposed letter addresses three issues of concern to LACERA and its members:

> **First**, the primary purpose of the letter is to encourage the IRS, in drafting the regulations, to avoid placing any liability on LACERA for payment of the tax in that LACERA's role is merely that of an administrator without any control over the processing of claims or the cost of medical care. The health insurance companies have responsibility and control in these areas and therefore should be liable for the tax.
>
> **Second**, the proposed letter points out the higher cost of coverage facing retiree-only plans and encourages the IRS to provide for age and gender adjustments to the dollar limits that trigger the excise tax. Such adjustments will decrease the impact of the excise tax on the premiums paid by the employer and LACERA's members.

///

Third, the letter recognizes that the coverage provider liable for the excise tax will pass the tax, and other costs of compliance, through to the employer and argues that this should not impact the cost of coverage.

We expect that the IRS will take these comments into consideration in drafting its regulations. However, LACERA will also have another opportunity to comment once proposed regulations are issued, which will likely be later this year.

We provided a copy of the draft letter to the County. At the September 10, 2015 Board meeting, we will share with the Board any input received from the County.

Background

A. The Affordable Care Act

The Affordable Care Act (ACA) imposes a 40% excise tax on any "excess benefit" provided by an employer-sponsored health care plan for tax years beginning after December 31, 2017. "Excess benefit" means the excess of the aggregate cost of an employee's applicable coverage over the applicable dollar limit. "Employee" is defined to include former employees, and therefore it would affect LACERA's retiree members participating in the retiree health care program. The 2018 baseline dollar limits against which the tax is proposed to be calculated are $10,200 per employee for self-only coverage and $27,500 per employee for other-than-self-only coverage. However, the ACA provides that a "health cost adjustment percentage" will be applied to the baseline amount. For years after 2018, a cost-of-living adjustment will also be made to the baseline amount.

Under the ACA, the tax shall be paid by (1) the "health insurance carrier," in the case of coverage provided under a group health plan, (2) the employer, in the case of coverage under arrangements where the employer makes contributions to a health savings account and Archer medical savings account, and (3) the "person that administers the plan benefits," in the case of all other coverage.

B. IRS Regulations

The IRS will implement and enforce the general provisions contained in the ACA by means of regulations that fill in the details. The law requires that the public be given notice and an opportunity to comment on proposed federal regulations before they become effective. Even before the process of drafting regulations begins, the IRS also often solicits public comment on issues to be covered in regulations.

In the case of the excise tax, the IRS has thus far indicated that it intends to follow a three-stage process. The process will consist of two Notices seeking public comment on subjects that the regulations will address, followed by proposed regulations as to which the public will also be able to comment.

///

C. The First IRS Notice

The IRS issued its first Notice, 2015-16, on February 23, 2015. The first Notice sought comment on the definition of applicable coverage, how the cost of applicable coverage is to be determined, and the application of the statutory dollar limit to the cost of coverage. After consultation with tax counsel, staff determined that it was not necessary or advisable for LACERA to submit comments on the topics covered by the first Notice because these are issues that would be of primary concern to the entity that will pay the tax. LACERA does not believe that, under the ACA, it is responsible to pay the tax. LACERA did not want, by submitting comments, to suggest to the IRS that the organization was concerned about tax calculation issues. While LACERA did not submit comments to the first Notice, LACERA and its tax counsel monitored and reviewed the comments submitted by other parties.

D. The Second IRS Notice

On July 30, 2015, the IRS issued its second Notice, 2015-52, a copy of which is attached as Exhibit B. The second Notice seeks comment on additional issues, including the person liable to pay the tax, age and gender adjustments to the baseline dollar limits, and how the person paying the tax may seek reimbursement of the tax. The first issue is of particular concern to LACERA because LACERA wants to make sure that the costs and burdens of paying the tax are placed on the proper party, i.e., the health insurers providing the coverage, rather than on LACERA.

Accordingly, again in consultation with tax counsel, LACERA concluded that it would be advisable to submit comment to the second Notice. The comments would explain LACERA's perspective on who should pay the tax, why it should not be an entity such as LACERA, and the issues that will need to be addressed by the IRS in its regulations to make clear where the tax liability falls. Further, since LACERA would be addressing the first issue raised in the Notice, tax counsel recommended that we also briefly comment on the age and gender adjustment and reimbursement issues.

Issues Addressed in the Proposed Letter

As noted above, a draft of the proposed comment letter to be submitted to the IRS in response to the second Notice is attached as Exhibit A. While this letter is in substantially final form, some minor adjustments and revisions may be made before it is submitted to the IRS. However, the substance will remain unchanged.

The letter was prepared by tax counsel, with the input and assistance of LACERA staff from the Retiree Health Care Division and the Legal Division. If approved by the Board, the letter will be submitted to the IRS on LACERA letterhead. Under the second Notice, the letter is due to the IRS no later than October 1, 2015.

The proposed letter addresses three issues.

///

A. The Person Liable for the Tax.

The majority of the proposed letter to the IRS is devoted to the issue of the person liable for the tax.

The letter first makes the point that, for group health plans such as LACERA's, the ACA provides that the health insurance issuer is responsible to pay the tax. The regulations should affirm and clarify this requirement and its applicability to plans such as the retiree health care plan administered by LACERA.

The letter points out that this approach is appropriate since the purpose of the ACA is to manage the cost of coverage, and the entities most able to control or influence the cost of coverage are the health insurance companies. The insurers underwrite the risk of providing coverage. The insurers control the cost of care through their relationships with medical providers, such as doctors, hospitals, laboratories, and pharmacies. The insurers then determine how the costs of care and associated risks are passed along to consumers in the premiums they charge. Thus, placement of the tax liability on the insurers will further the policy of the ACA by placing the financial burden, and incentives, on the person with control over costs.

The ACA also provides that, in certain circumstances, the tax may be imposed upon "the person that administers the plan benefits." The proposed letter explains that the circumstances triggering administrator liability do not apply to LACERA since the plan is a group plan for which, as pointed out above, the ACA expressly imposes tax liability on the health insurance issuer. Nevertheless, tax counsel and we believe it is important that nothing in the IRS regulations suggest that LACERA could ever, under any circumstances, be considered the type of administrator that would be liable to the tax. The letter explains that, while LACERA does "administer" the plan in the sense of facilitating enrollment, premium negotiation, and premium payment, LACERA does not "administer the plan benefits" (which is the phrase used in the ACA).

"Administration of plan benefits" includes claim processing and handling, responding to claim inquiries, and providing a technology platform for a member's benefits information. LACERA does not serve any of these functions. The letter discusses at length the distinctions between the administration work LACERA performs and the "administration of plan benefits." The point of this discussion in the letter is to encourage the IRS to make it clear in the regulations what is and is not "administration of plan benefits" in a way that will protect LACERA from tax liability.

Ensuring that LACERA is not responsible for the tax is an important issue for the organization even though LACERA would be compensated for any tax it pays as a cost of administering the system under its agreement with the County. However, LACERA still wishes to avoid the tax because the work associated with payment of the tax would be a large administrative burden which would detract from LACERA's primary mission of supporting the program through information, enrollment, and premium payment services.

It is important for the Board to understand that the insurers' liability for the tax under the ACA will have a major adverse consequence. The IRS recognizes in the Notice that the tax will be passed through. The insurers will also likely pass through their administrative costs of paying the tax, which could increase coverage costs even more. (LACERA also addresses this issue in the proposed letter. See Section C below.) Nevertheless, the ACA provides for the insurance companies, not LACERA, to be liable for the tax in a group health plan. The position taken by LACERA is therefore consistent with the ACA as well as the interests of the organization in not diverting resources and effort from member service.

B. Age and Gender Adjustments.

The letter briefly discusses the need for the IRS regulations to include age and gender adjustments. The letter provides some very general background and information on this issue based on input received from Aon and Anthem. We expect that the adjustment issue will be addressed in greater detail in comments letter to be submitted by the insurance carriers and other parties. Still, LACERA and its members are concerned about this issue because, if the appropriate adjustments are made to recognize the higher cost of retiree-only plans, it will reduce the ultimate impact of the tax on the plan sponsor and participants.

We may have more to say about this issue when the IRS provides further guidance on its approach to the adjustments in the proposed regulations. LACERA can comment further on the adjustment issue at that time.

C. Excise Tax Reimbursement.

The proposed letter mentions this issue to convey LACERA's view that the excise tax, reimbursement of the excise tax, and the insurers' costs of compliance should not be factored into the cost of coverage subject to the tax, thereby having snowball effect in increasing the tax. Notice 2015-52 already seems to recognize this concept. As a result, tax counsel does not believe it is necessary to say anything more about the issue now. LACERA can comment further on this issue when the IRS provides additional guidance on how the issue will be addressed in its proposed regulations.

Conclusion

Tax counsel believes that, given LACERA's size and standing, a comment letter from LACERA will have credibility with the IRS and will be seriously considered by the IRS in drafting the proposed regulations. LACERA will have another opportunity to provide input to the IRS once the proposed regulations are issued, which it is expected will be in late 2015.

///

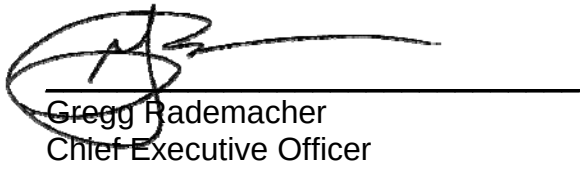
///

///

For these reasons, **IT IS RECOMMENDED** that the Board of Retirement approve and authorize LACERA staff to submit a comment letter to the IRS, substantially in the form attached as Exhibit A, in response to Notice 2015-52 concerning implementation of the excise tax under the Affordable Care Act.

Attachments

Reviewed and Approved:



Gregg Rademacher
Chief Executive Officer

cc: Gregg Rademacher
Robert Hill
John J. Popowich

EXHIBIT A

Draft of Comment Letter

CC:PA:LPD:PR (Notice 2015-52), Room 5203
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: IRS Notice 2015-52, Excise Tax on High Cost Employer-Sponsored Health Coverage

Dear Sir or Madam:

The Los Angeles County Employees Retirement Association ("LACERA") submits these comments in response to IRS Notice 2015-52 (the "Notice") which describes potential approaches to implementing the Excise Tax on High Cost Employer-Sponsored Health Coverage (the "Excise Tax") under Internal Revenue Code section 4980I ("Section 4980I"). The Excise Tax is a 40% tax that applies to any "excess benefit," meaning the excess of the aggregate cost of an employee's applicable coverage over the applicable dollar limit. Section 4980I requires each "coverage provider" to pay the excise tax on its applicable share of the excess benefit. LACERA understands the challenges posed by Section 4980I, and appreciates the diligent and collaborative rulemaking process in which the Treasury Department and Internal Revenue Service ("IRS") are engaged, particularly in the context of identifying the "coverage provider" responsible for the Excise Tax. LACERA is concerned that the Excise Tax may have unintended consequences for retirees and for public pension systems that facilitate retiree health benefits—benefits that, although modest, often cost more because of their older population. LACERA offers these comments to highlight the unique and limited administrative role that many public pension systems play in facilitating health benefits for fixed income pensioners, and to urge the Treasury Department and IRS to avoid harming pensioners by any inadvertent application of the Excise Tax to public pension systems.

1. Background

LACERA is one of the largest public pension systems in the United States, with over 150,000 members and over $48 billion in assets. An independent governmental entity, separate and distinct from its plan sponsors, LACERA is responsible for managing and administrating pension benefits for employees of Los Angeles County ("County") and certain other participating employers. Secondarily, it facilitates[1] retiree health benefit coverage, primarily through fully-insured group health insurance plans. These benefits consist of indemnity plans, HMO plans, a Medicare Supplement Plan,

[1] In this letter, in order to avoid confusion, we use the word "facilitate," rather than "administer," to refer to the limited administrative functions performed by LACERA which we believe are materially different from the more substantive administrative functions encompassed by Section 4980I's reference to "the person that administers the plan benefits."

Medicare Advantage Prescription Drug HMO plans, and dental and vision plans, all of which are fully-insured and offered through large health insurance issuers.[2]

LACERA's role with respect to these benefits is limited. LACERA does not have independent authority over benefit levels, and most plan design changes are subject to the authority of the County. For example, the decision to add Medicare Risk Plans and Medicare Supplement Plans in 1990 was made by the County. Likewise, a recent plan change that reduced benefits for new employees was implemented by way of the County's contract with LACERA. Similarly, LACERA bears no independent financial risk for benefits. Currently, 91% of premium payments are subsidized by the County, with the remaining 9% paid for by retirees.

Although LACERA is commonly referred to as the plan administrator for the retiree health benefits being provided, it does not perform the functions that would typically be performed by a third party administrator. Most significantly, LACERA has no role in claims processing or adjudication, and is not responsible for coordination of benefits, subrogation, pre-certification, medical necessity determinations or other similar matters that are generally handled with claim processing. LACERA also does not provide a technology platform with a member's individual benefit or claim information. Rather, LACERA's administrative functions are more akin to those that would typically be performed by the benefits unit within a large Human Resources Department that handles general program management for an insured group health plan but does not administer any individual member's specific benefits and claims once coverage is established. For example, LACERA collects premiums from retirees by deducting their monthly pension checks, and it collects premium subsidies from the County.[3] It then forwards these amounts to the health plans. LACERA also enrolls retirees into the health plans, determines eligibility for enrollment, determines whether any waiting periods have been met, determines the County's share of the premium based on the retiree's years of service, and provides a call center to respond to participant questions on purely administrative issues rather than coverage or claim handling or processing.

2. Liability for the Excise Tax

Section 4980I provides that the health insurance issuer will be liable for the Excise Tax in all cases where coverage is provided by insured group health plans. In

[2] A limited number of LACERA members participate in the Los Angeles County Fire Fighters Local 1014 Health and Welfare Plan, which offers its own self-administered medical plan and insured dental and life plan to retirees of the Los Angeles County Fire Department. Premiums are subsidized by the County. LACERA's limited role with regard to this plan is collecting premiums from retirees by deducting their pension checks, and determining eligibility for the County subsidy and collecting the subsidies from the County for covered retirees, and then forwarding these amounts to the plan administrator. LACERA has no independent authority or financial liability for this plan.

[3] Because LACERA is responsible for paying monthly pension checks to retirees, it is in the best position to deduct health premiums from those checks.

fact, the Excise Tax appears to have been intended to be primarily a tax on insurers.[4] This makes sense because the health insurance issuer underwrites the risk and is ultimately liable for the cost of coverage.[5] As such, it is in the best position to control the cost of coverage, and the benefit payment stream upon which the tax is ultimately determined. In short, where coverage is provided through insured group health plans, there is no need to look beyond the health insurance issuer for liability with respect to the Excise Tax. Accordingly, the coverage providers responsible for any related Excise Tax will be the large health insurance issuers with whom LACERA contracts.[6]

Only in the absence of a health insurance issuer does it become necessary to look elsewhere for the Excise Tax. In the case of an HSA or Archer MSA (neither of which is part of the retiree health care program facilitated by LACERA), Section 4980I provides that the employer is responsible for the Excise Tax. This is because under these plans, the employer stands in place of the insurer as the party liable for the cost of coverage. Reports issued by the Senate Finance Committee and the Joint Committee on Taxation confirm this, noting that "if an employer contributes to an HSA or an Archer MSA, the employer is responsible for payment of the excise tax, as the insurer" (emphasis added).[7] By standing in the shoes of the insurer, the employer assumes liability for the cost of coverage, and is in the best position to control that cost.

Where coverage is not provided under an insured group health plan, or by way of an HSA or Archer MSA, Section 4980I provides that the coverage provider is "the person that administers the plan benefits." The Treasury Department and IRS are considering two approaches for determining the identity of the person that administers the plan benefits. Before commenting on these two approaches, we emphasize that determining the identity of the person that administers the plan benefits is only

---

[4] *See* Senate Finance Committee, *America's Healthy Future Act of 2009, Report to Accompany S. 1796 on Providing Affordable, Quality Health Care for all Americans and Reducing the Growth in Health Care Spending, and for Other Purposes Together with Additional and Minority Views*, S. REP. NO. 111-89, October 19, 2009, at 325 [Senate Finance Committee Report]; Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as amended, in combination with the "Patient Protection and Affordable Care Act"* (JCX-18-10), March 21, 2010, at 62 [Joint Committee on Taxation Technical Explanation]; Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 111th Congress* (JCS–2–11), March 2011, at 305 [Joint Committee on Taxation General Explanation].

[5] In using the phrase "cost of coverage," LACERA is referring to the bundle of costs associated with providing coverage that include more than premium costs. Consistent with IRS Notice 2015-16, LACERA recognizes that the cost of coverage includes administrative expenses and overhead expenses, in addition to the cost of claims.

[6] As noted above, the Los Angeles County Fire Fighters Local 1014 Health and Welfare Plan provides its own self-administered medical coverage and insured dental and life coverage.

[7] Senate Finance Committee Report, *supra* at 325; Joint Committee on Taxation Technical Explanation, *supra* at 62; Joint Committee on Taxation General Explanation, *supra* at 305.

necessary when the coverage is not provided under an insured group health plan, or by way of an HSA or Archer MSA. In LACERA's case, where all coverage is insured, Section 4980I makes explicit that the health insurance issuers are responsible for any Excise Tax, not LACERA. Notwithstanding this, LACERA is concerned that regulations defining the person that administers the plan benefits may inadvertently overreach and apply to entities that perform only minimal administrative functions, such as LACERA. To that end, in that LACERA does not "administer the plan benefits" in the sense referred to in Section 4980I, LACERA offers the following comments:

- Bearing in mind that the Excise Tax was intended to be a tax on insurers, the person that administers the plan benefits should be the entity that functions most like the health insurance issuer in terms of controlling the cost of coverage. Hence, the person that administers the plan benefits should be the entity performing those functions that most directly impact the cost of coverage, and would otherwise be handled by the health insurance issuer if the coverage were insured. Any other result would be illogical because it would separate the Excise Tax from the benefit payment stream upon which it is ultimately determined, and as a result, the entity liable for the Excise Tax would not actually control the cost of coverage.

- Under either approach, the person considered to be administering the plan benefits should be an entity with an independent source of funds with which to pay the Excise Tax and one that is also liable for funding the benefits (e.g., a health insurance issuer or, in the case of a self-insured plan, the employer). The person considered to be administering the plan benefits should not be an entity, like LACERA, that is merely a conduit of funds, and has no fund source from which to pay the Excise Tax. The purpose of Section 4980I can best be achieved if the Excise Tax is levied against a party that is financially invested in the cost of coverage.[8]

- LACERA encourages use of the second approach proposed by the Treasury Department and IRS which would define the person that administers the plan benefits as the entity that has ultimate authority or responsibility with respect to the administration of plan benefits. Of particular importance, this should be the entity with authority or responsibility at the level at which benefits are provided, such as authority over arrangements with health care providers. This entity is in the best position to impact the cost of coverage because it selects health care providers and networks, and determines the amounts they will be paid for health care services. This function is qualitatively different from negotiating premium rates with an insurer. Employers and plan sponsors frequently negotiate premium rates, as do systems like LACERA on behalf of employers like the County, but they generally (as with LACERA) lack control over (and even information about) health care provider arrangements, and therefore are

[8] In LACERA's case, the purpose of Section 4980I could be frustrated if LACERA were deemed the coverage provider because it does not have a source of funds upon which to draw to pay the Excise Tax, and it would be unlawful to use pension assets for this purpose.

not meaningfully positioned to influence the cost of coverage in the way the insurer can by determining the amounts paid for claims as well as administrative and overhead expenses. Likewise, the person that administers the plan benefits should have ultimate authority over claims adjudication insofar as claims adjudication also directly impacts the cost of coverage. Hence, responsibility for health care provider contracts and claims adjudication should take precedence over responsibility for functions that are not at the provider level, such as premium collection and enrollment activities.

- LACERA recommends against defining the person that administers the plan benefits as the person responsible for performing the day-to-day administrative functions. In many instances, it will be difficult to identify a single entity as being responsible for day-to-day administrative functions. In the case of LACERA, as with many large plans, several entities play administrative roles. For example, LACERA collects premiums, enrolls retirees in the health plans, determines eligibility, and provides call center services, but it does not perform other more substantive functions, such as claims processing. The role played by entities such as LACERA is necessary to facilitating the provision of insurance benefits (particularly since LACERA pays the monthly pension checks from which premiums are deducted), but it is not the type of activity, nor does it demonstrate the type of control over coverage, that should trigger liability for the tax.

- Alternatively, if the person that administers the plan benefits is defined as the person responsible for performing the day-to-day administrative functions, then the functions should be specifically and narrowly defined to require the administrative functions that are at the level at which benefits are provided, have the most direct impact on the cost of coverage, and would otherwise be handled by the health insurance issuer if the coverage were insured. For example, it should require responsibility for coverage and provider network design, claims adjudication, coordination of benefits, subrogation, pre-certification, medical necessity determinations, utilization review, and handling referrals and second opinions.[9] It should not include administrative functions that would typically be performed by a sponsor of an insured group health plan, such as premium collection, enrollment processing and preliminary eligibility determinations.

- Lastly, in determining the person that administers the plan benefits, consideration should be given to the uncertainty as to whether it would be constitutional to impose the Excise Tax on public pension systems insofar as the federal government is generally precluded from directly taxing the States and their

[9] To the extent these functions include providing a "technology platform," as referenced in Notice 2015-52, that term should be defined. Specifically, it should refer to a *benefits* technology platform that includes such things as participants' claims and benefit information. It should not be confused with a technology platform that is more akin to a human resources platform that collects general enrollment information (e.g., addresses, names of dependents, etc.), but does provide a platform once coverage is established or otherwise provide a mechanism for handling claims.

instrumentalities. LACERA asks that the Treasury Department and IRS avoid any application of the Excise Tax that could be deemed unconstitutional.

3. Age and Gender Adjustment of the Dollar Limit

LACERA supports adjustments that would provide for an increase in the dollar limits based on age and gender characteristics and thereby decrease the impact of the Excise Tax. As you know, retiree health plans have specific actuarial features based on the older-than-average age of their participants that cause costs to go up, even when benefit levels are comparable to plans that include active employees. Health insurance issuers with whom LACERA contracts indicate that retiree health care costs are as much as 50% to 100% higher than costs for active employees. LACERA supports, and believe it would be appropriate, to make adjustments even greater than those mentioned in the Notice. LACERA looks forward to further guidance on this issue.

4. Excise Tax Reimbursement

The Notice recognizes that the coverage provider liable for the Excise Tax may pass through that amount to the employer, and that reimbursement of the Excise Tax may create additional tax events. LACERA is concerned that the Excise Tax could be passed off by way of increased premiums, to the detriment to retirees. LACERA is also concerned that insurers may increase premiums to pass through income tax incurred as a result of any Excise Tax reimbursement. LACERA is further concerned that an insurer's increased administrative costs of compliance associated with the Excise Tax and reimbursement of the Excise Tax will result in additional premium increases. To the extent these costs are passed off through premium increases, it will negatively impact LACERA's retiree members. Increased premiums could also mean an increase in the cost of coverage, and, in turn, the Excise Tax. LACERA believes it is important that Excise Tax reimbursements, related income tax reimbursements, and administrative costs of compliance be excluded from the cost of coverage so that they do not artificially increase the Excise Tax. LACERA looks forward to more guidance on this issue, specifically as to how the amounts would need to be billed.

LACERA appreciates the opportunity to comment on these important issues, and urges the Treasury Department and IRS to take into account the unique needs of retirees, and the pension systems that facilitate their health care benefits, during this rulemaking process. Ensuring that health care remains affordable for fixed income pensioners requires thoughtful consideration of these issues. If you have any questions or comments, please call Cassandra Smith, Director, Retiree Health Care, at (626) 564-3621, or csmith@lacera.com.

Sincerely,

Gregg Rademacher
Chief Executive Officer

EXHIBIT B

IRS Notice 2015-52

Section 4980I — Excise Tax on High Cost Employer-Sponsored Health Coverage

Notice 2015-52

I. PURPOSE AND OVERVIEW

This notice is intended to continue the process of developing regulatory guidance regarding the excise tax on high cost employer-sponsored health coverage under § 4980I of the Internal Revenue Code (Code). Section 4980I, which was added to the Code by the Affordable Care Act,[1] applies to taxable years beginning after December 31, 2017. Under this provision, if the aggregate cost of applicable employer-sponsored coverage (applicable coverage) provided to an employee exceeds a statutory dollar limit (dollar limit), which is adjusted annually, the excess benefit is subject to a 40 percent excise tax.

On February 23, 2015, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued Notice 2015-16, 2015-10 IRB 732, which describes potential approaches regarding a number of issues under § 4980I that may be incorporated into future regulations. Notice 2015-16 addresses issues primarily relating to (1) the definition of applicable coverage, (2) the determination of the cost of applicable coverage, and (3) the application of the dollar limit to the cost of applicable coverage to determine any excess benefit subject to the excise tax. Treasury and IRS invited comments on the issues addressed in that notice and on any other issues under § 4980I.

This notice is intended to supplement Notice 2015-16 by addressing additional issues under § 4980I, including the identification of the taxpayers who may be liable for the excise tax, employer aggregation, the allocation of the tax among the applicable taxpayers, and the payment of the applicable tax. This notice also addresses further issues regarding the cost of applicable coverage that were not addressed in Notice 2015-16. Treasury and IRS invite comments on these issues and any other issues under § 4980I. After considering the comments on both notices, Treasury and IRS intend to issue proposed regulations under § 4980I. The proposed regulations will provide further opportunity for comment, including an opportunity to comment on the issues addressed in the preceding notices.

[1] The "Affordable Care Act" refers to the Patient Protection and Affordable Care Act (enacted March 23, 2010, Pub. L. No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (enacted March 30, 2010, Pub. L. No. 111-152), and as further amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (enacted April 15, 2011, Pub. L. No. 112-10).

This notice includes the following sections:

II. BACKGROUND

Section 4980I(a) imposes a 40 percent excise tax on any "excess benefit" provided to an employee, and § 4980I(b) provides that an excess benefit is the excess, if any, of the aggregate cost of applicable coverage of the employee for the month over the applicable dollar limit for the employee for the month.[2]

Section 4980I(c)(1) provides that each coverage provider must pay the excise tax on its applicable share of the excess benefit with respect to an employee for any taxable period.

Section 4980I(c)(2) defines the "coverage provider" as (A) the health insurance issuer, in the case of applicable coverage under a group health plan that provides health insurance coverage, (B) the employer, in the case of applicable coverage under an arrangement in which the employer makes contributions described in § 106(b) or (d) (health savings accounts (HSAs) and Archer medical savings accounts (Archer MSAs)), and (C) the person that administers the plan benefits, in the case of any other applicable coverage. Section 4980I(f)(6) provides that the term "person that administers the plan benefits" includes the plan sponsor if the plan sponsor administers benefits under the plan. Section 4980I(f)(7) provides that the term "plan sponsor" has the meaning given such term in § 3(16)(B) of the Employee Retirement Income Security Act of 1974 (ERISA).

[2] See sections III and IV of Notice 2015-16 for background on the provisions of § 4980I related to the definition of applicable coverage and the calculation of the excess benefit (including the calculation of the aggregate cost of the applicable coverage and determination of the applicable dollar limit).

Section 4980I(c)(3) defines a coverage provider's applicable share of an excess benefit for any taxable period as the amount which bears the same ratio to the amount of such excess benefit as (A) the cost of applicable coverage provided by the provider to the employee during that period, bears to (B) the aggregate cost of all applicable coverage provided to the employee by all coverage providers during that period.

Section 4980I(c)(4)(A) provides that each employer must calculate for each taxable period the amount of the excess benefit subject to the excise tax and the applicable share of such excess benefit for each coverage provider. Section 4980I(c)(4)(A) further provides that each employer must notify, at such time and in such manner as the Secretary may prescribe, the Secretary and each coverage provider of the amount so determined for the provider.

Section 4980I(c)(4)(B) provides a special rule for multiemployer plans under which the plan sponsor of the multiemployer plan (as defined in § 414(f)) is responsible for making the calculations and for providing the notice.

Section 4980I(f)(8) provides that the term "taxable period" means the calendar year or such shorter period as the Secretary may prescribe. Section 4980I(f)(8) further provides that the Secretary may prescribe different taxable periods for employers of varying sizes.

Section 4980I(f)(9) provides that all employers treated as a single employer under subsection (b), (c), (m), or (o) of § 414 are treated as a single employer.

Section 4980I(f)(10) provides a cross-reference to § 275(a)(6) for the denial of a deduction for the tax imposed by § 4980I. Section 275(a)(6) provides that no deduction is allowed for the taxes imposed by chapters 41, 42, 43, 44, 45, 46 and 54 of the Code. Section 4980I is located in chapter 43 of the Code, and therefore no deduction is allowed for the payment of tax under § 4980I.

III. PERSONS LIABLE FOR THE § 4980I EXCISE TAX

A. Coverage Provider

Section 4980I(c)(1) provides that the coverage provider is liable for any applicable excise tax. The identity of the coverage provider depends on the type of coverage provided. Under the statute, in the case of applicable coverage provided under an insured group health plan, the coverage provider is the health insurance issuer. With respect to coverage under an HSA or an Archer MSA, the coverage provider is the employer. For all other applicable coverage, the coverage provider is "the person that administers the plan benefits."

B. Person That Administers the Plan Benefits

Section 4980I does not define the term "person that administers the plan benefits." Section 4980I(f)(6) provides that the term "person that administers the plan benefits" includes the plan sponsor if the plan sponsor administers benefits under the

plan, which indicates that the plan sponsor of a self-insured arrangement may be, but is not always, the person that administers benefits under the plan. The term, "person that administers the plan benefits," is not used elsewhere in the Code, nor is it used elsewhere in the Affordable Care Act or in ERISA or the Public Health Service Act, both of which were amended by the Affordable Care Act. Because the term "person that administers the plan benefits" is not used in other statutory contexts, Treasury and IRS are considering two alternative approaches to determining the identity of the person that administers the plan benefits.[3] Under either approach, it is anticipated that the person that administers the plan benefits will generally be an entity, rather than an individual, but for purposes of the discussion below, the relevant entity or individual is referred to as a "person."

Under one approach, the person that administers the plan benefits would be the person responsible for performing the day-to-day functions that constitute the administration of plan benefits, such as receiving and processing claims for benefits, responding to inquiries, or providing a technology platform for benefits information. Treasury and IRS anticipate that this person generally would be a third-party administrator for benefits that are self-insured, except in the rare circumstance in which the employer or plan sponsor performs these functions, or owns the person that performs these functions. Comments are requested on the types of administrative functions that should be considered under this approach when determining the person that administers the plan benefits. Comments are also requested on whether the person that administers the plan benefits could be easily identified in most instances under this approach, or whether the identity of the person that administers the plan benefits would often be unclear because, for example, multiple parties (such as a pharmacy benefit administrator and a medical claims benefit administrator) perform the relevant functions with respect to a benefit package for which a single cost of applicable coverage will be determined as discussed in section IV.C of Notice 2015-16 (concerning potential approaches for determining the cost of applicable coverage). In addition, Treasury and IRS request comments on any other concerns this approach would raise.

Under the second approach that Treasury and IRS are considering, the person that administers the plan benefits would be the person that has the ultimate authority or responsibility under the plan or arrangement with respect to the administration of the plan benefits (including final decisions on administrative matters), regardless of whether that person routinely exercises that authority or responsibility. For purposes of this second approach, the relevant types of administrative matters over which the person

---

[3] The Department of Health and Human Services (HHS) recently issued regulations defining a category of self-administered, self-insured plans for purposes of applicability of the fee, imposed by § 1341 of the Affordable Care Act, which funds the Transitional Reinsurance Program. The definition in these HHS regulations focuses on the party directly responsible for claims administration and plan enrollment. *See Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2015; Final Rule*, 79 Fed. Reg. 13744, 13772-75 (March 11, 2014). Section 4980I of the Code and § 1341 of the Affordable Care Act are provisions with no common statutory language. Accordingly, it is not anticipated that the definition of the person that administers the plan benefits for § 4980I purposes will align with the definition for self-insured self-administered plans in the HHS regulations.

that administers plan benefits would have ultimate authority or responsibility could include eligibility determinations, claims administration, and arrangements with service providers (including the authority to terminate service provider contracts). Treasury and IRS anticipate that the person with such ultimate administrative authority or responsibility under the plan or arrangement would be identifiable based on the terms of the plan documents and often would not be the person that performs the day-to-day routine administrative functions under the plan. Comments are requested on whether the person that administers the plan benefits would be easy to identify under this second approach in most circumstances or whether multiple parties have ultimate authority or responsibility for the different relevant administrative matters with respect to the same benefit package, and whether in most instances this approach would identify an appropriate person as the person that administers the plan benefits. Comments are requested on any other issues this approach would raise.

Comments are invited on the application of these approaches to collectively bargained multiemployer health plans.

IV. EMPLOYER AGGREGATION

Section 4980I(f)(9) provides generally that, for purposes of § 4980I, all employers treated as a single employer under subsections (b), (c), (m), or (o) of § 414 are treated as a single employer. Treasury and IRS invite comments on the practical challenges presented by the application of those aggregation rules to § 4980I. In particular, Treasury and IRS request comments on the application of these employer aggregation rules to the: (1) identification of the applicable coverage taken into account as made available by an employer (§ 4980I(d)(1)(A)); (2) identification of the employees taken into account for the age and gender adjustment (§ 4980I(b)(3)(C)(iii)), and the adjustment for employees in high risk professions or who repair and install electrical or telecommunications lines (§ 4980I(b)(3)(C)(iv)); (3) identification of the taxpayer responsible for calculating and reporting the excess benefit (§ 4980I(c)(4)(A)); and (4) identification of the employer liable for any penalty for failure to properly calculate the tax imposed under § 4980I (§ 4980I(e)(1)(B)).

V. COST OF APPLICABLE COVERAGE

A. Taxable Period

Taxable period is defined under § 4980I(f)(8) to mean the calendar year or such shorter period as the Secretary may prescribe. The section provides that the Secretary may have different taxable periods for employers of varying sizes. Treasury and IRS anticipate that the taxable period will be the calendar year for all taxpayers.

B. Determination Period

To calculate the amount of any excise tax that a coverage provider may owe under § 4980I for a taxable period, an employer must determine the extent, if any, to which the cost of applicable coverage provided to an employee during any month of the taxable period exceeds the dollar limit. The employer then must notify both IRS and the

coverage provider of the amount of the excess benefit, and the tax must be paid by the coverage provider. Accordingly, Treasury and IRS anticipate that employers will be required to determine the cost of applicable coverage provided during a taxable year sufficiently soon after the end of that taxable year to enable coverage providers to pay any applicable tax in a reasonably timely manner.

Section 4980I(d)(2)(A) provides that the cost of applicable coverage is to be determined using rules "similar to the rules of section 4980B(f)(4)" regarding the determination of the COBRA applicable premium. Section IV.C of Notice 2015-16 invited comments on potential approaches to determining the cost of applicable coverage. Treasury and IRS now invite further comments on any issues raised by the anticipated need to determine the cost of applicable coverage for a taxable period reasonably soon after the end of that taxable period.

Treasury and IRS anticipate that the potential timing issues are likely to be different for insured plans and self-insured plans, and will also be different for HSAs, Archer MSAs, health flexible spending arrangements (FSAs),[4] and health reimbursement arrangements (HRAs). In the case of self-insured plans, for example, if the cost of applicable coverage is determined based on a period ending at or before the beginning of the applicable calendar year, then the necessary information should be available to the employer relatively soon after the applicable calendar year ends to permit it to calculate any excess benefit for each employee and allocate any excess benefit among coverage providers. In contrast, if the cost of applicable coverage is determined based on a period ending during or at the end of the applicable calendar year, the cost may be determinable only after the end of both the applicable calendar year and a subsequent run-out period during which employees may submit claims for reimbursement. In that case, an employer will need additional time to compute the cost of applicable coverage before it can calculate any excess benefit for each employee and allocate any excess benefit among coverage providers.

In addition, experience-rated arrangements may provide for payments to be made to or from an insurance company after the end of a coverage period that relate to the coverage provided during that coverage period. In other instances, the equivalent of those types of payments may be made through a premium discount for the next coverage period. Comments are requested on how those payments or discounts may be reflected in the cost of applicable coverage, including comments on any administrative issues that might arise if, for purposes of determining the cost of applicable coverage, the payments or discounts are attributed back to the original period of coverage (for which the taxable year might have ended) rather than accounted for during the period of coverage in which the amounts are paid or the discount applied. In addition, comments are requested on how employers are addressing these payments or discounts currently for purposes of determining COBRA applicable premiums. Taking into account the potential approaches to the determination of the cost of

[4] All references in this notice to flexible spending arrangements refer only to health flexible spending arrangements.

applicable coverage outlined in Notice 2015-16, as well as other issues with timing implications, Treasury and IRS request comments on the processes expected to be involved in calculating and allocating any excess benefit and the time period necessary to complete these processes.

C. Exclusion from Cost of Applicable Coverage of Amounts Attributable to the Excise Tax

As discussed in section III of this notice, the excise tax will be paid by the health insurance issuer for insured coverage and by the "person that administers the plan benefits" (which may, in some instances, be the employer) in the case of self-insured coverage. It is expected that, if a person other than the employer is the coverage provider liable for the excise tax, that person may pass through all or part of the amount of the excise tax to the employer in some instances. If the coverage provider does pass through the excise tax and receives reimbursement for the tax (the excise tax reimbursement), the excise tax reimbursement will be additional taxable income to the coverage provider. Because § 4980I(f)(10) provides that the excise tax is not deductible, the coverage provider will experience an increase in taxable income (that is not offset by a deduction) by reason of the receipt of the excise tax reimbursement. As a result, it is anticipated that the amount the coverage provider passes through to the employer may include not only the excise tax reimbursement, but also an amount to account for the additional income tax the coverage provider will incur (the income tax reimbursement).

In determining the cost of applicable coverage subject to the excise tax, § 4980I(d)(2)(A) provides that "any portion of the cost of such coverage which is attributable to the tax imposed under this section shall not be taken into account." This indicates that the excise tax reimbursement should be excluded from the cost of applicable coverage, and it is anticipated that future regulations will reflect this interpretation.

Treasury and IRS are also considering whether some or all of the income tax reimbursement could be excluded from the cost of applicable coverage. However, Treasury and IRS are concerned that a methodology for excluding an income tax reimbursement may not be administrable, given the potential variability of tax rates and other factors among different coverage providers and potential difficulties in determining and excluding the reimbursement amount. Nonetheless, comments are requested on administrable methods for exclusion of the income tax reimbursement.

Because it may not be feasible to exclude amounts that are not separately billed, Treasury and IRS anticipate that coverage providers would be permitted to exclude the amount of any excise tax reimbursement or income tax reimbursement only if it is separately billed and identified as attributable to the cost of the excise tax. Separately billed amounts in excess of the excise tax reimbursement or the income tax reimbursement (as determined in the manner discussed in section V.D below) could not be excluded from the cost of applicable coverage (and, therefore, would be treated as part of the cost of applicable coverage). Comments are requested on any practical

issues or legal barriers to passing through any or all of these amounts or to separately identifying these amounts, such as federal rating rules or state insurance law.

Coverage providers generally will not know the amount of any excise tax due with respect to applicable coverage provided for a taxable period (discussed in section V.A above) until after the end of the taxable period. As a result, Treasury and IRS expect that, as a practical matter, the coverage provider generally will be unable to bill for the excise tax reimbursement or the income tax reimbursement until the excise tax is paid by the coverage provider. However, comments are requested on whether there are alternative approaches that might allow for earlier billing of the amount but that would not give rise to undue administrative complexity or difficulty.

D. Income Tax Reimbursement Formula

If Treasury and IRS conclude that an income tax reimbursement can be excluded from the cost of coverage, it is anticipated that the amount of the income tax reimbursement would be determined using a formula commonly used to calculate "tax gross-ups." As mentioned previously, a coverage provider that passes the excise tax through to another party will have additional taxable income as a result of receipt of the excise tax reimbursement. If a coverage provider then also passes through the amount of the income tax due on the excise tax reimbursement, the reimbursement of that additional amount will further increase the taxable income of the coverage provider, and the coverage provider will owe additional income tax due to that reimbursement as well. The formula would take these additional taxes into account in determining the amount of the income tax reimbursement. Under the formula, the amount of the income tax reimbursement that would be excludable from the cost of applicable coverage would be:

$$\text{Income Tax Reimbursement} = \frac{\text{[amount of tax]}}{(1 - \text{[marginal tax rate]})} - \text{[amount of tax]}$$

In this formula, the "amount of tax" is the excise tax rate multiplied by the initial excess benefit calculated without regard to any portion of the cost of applicable coverage that the coverage provider identifies as arising from an excise tax reimbursement or an income tax reimbursement. For example, if the cost of applicable coverage without regard to the tax is $2,500 in excess of the dollar limit, a coverage provider would owe $1,000 as a § 4980I excise tax ($2,500 times the 40 percent rate). If the coverage provider's marginal tax rate is 20 percent,[5] the formula would divide $1,000 (the amount of the excise tax) by .8 (1-0.2), which equals $1,250; and then subtract $1,000 (the amount of the excise tax), which equals $250 ($1,250 - $1,000).

[5] If the coverage provider were not subject to income tax on the excise tax reimbursement (for example, because it is a tax-exempt organization described in § 501(c) that is not subject to unrelated business income tax on the reimbursement under § 511), its marginal tax rate on the reimbursement would be zero, producing an income tax reimbursement amount of zero under the formula.

Accordingly, the income tax reimbursement on an excise tax of $1,000 paid by a coverage provider with a marginal tax rate of 20 percent would be $250.

If it is determined that an income tax reimbursement can be excluded from the cost of applicable coverage, Treasury and IRS are considering two possible approaches for applying the formula described above. The first approach would use the coverage provider's actual marginal tax rate in the formula. This approach could provide greater flexibility to taxpayers, but also could create administrative difficulties for IRS, coverage providers, and employers due to the extended time needed to determine a taxpayer's marginal tax rate for any year, changes in a coverage provider's marginal tax rate from year to year (including potential retroactive changes due to amended returns, audits, or other circumstances), and the fact that a coverage provider's marginal tax rate is generally determined for its fiscal year, which may not be the same as the calendar year taxable period for which the cost of applicable coverage is determined. This approach could also create an additional administrative burden in cases in which multiple coverage providers are liable for tax for coverage offered by a given employer. Comments are requested on whether there are workable solutions to these administrative challenges that would permit Treasury and IRS to implement such an approach.

The second approach would prescribe, for purposes of applying the income tax reimbursement formula in a manner that is administrable, a standard marginal tax rate[6] based on typical marginal tax rates applicable to different types of health insurance issuers. It is anticipated that the prescribed rates would reflect an approximately representative marginal rate that would be less than the statutory maximum rate. The prescribed rate for an insurer would be used in the income tax reimbursement formula rather than the coverage provider's actual marginal tax rate. While more administrable, this approach may not permit some taxpayers to exclude from the cost of applicable coverage the total income tax reimbursement, but would permit other taxpayers to exclude from the cost of applicable coverage more than the total income tax reimbursement. Comments are requested on how these standard marginal tax rates might be determined, how many such rates might apply (for example, one for each of two or three categories of insurers) and for what types of insurers, and how this approach would affect particular segments of taxpayers.

E. Allocation of Contributions to HSAs, Archer MSAs, FSAs, HRAs

Applicable coverage under § 4980I(d)(1)(A) is "coverage under any group health plan made available to the employee by an employer which is excludable from the employee's gross income under section 106, or would be so excludable if it were employer-provided coverage (within the meaning of such section 106)." Applicable coverage includes coverage under certain HSAs, Archer MSAs, FSAs, or HRAs.

---

[6] If an approach using a standard marginal tax rate were adopted, the standard marginal tax rate would not be available to coverage providers that are not subject to income tax on the excise tax reimbursement.

Section 4980I(a) imposes an excise tax equal to 40 percent of the excess benefit if an employee is covered under any applicable coverage of an employer at any time during a taxable period and there is any excess benefit with respect to the coverage. Under § 4980I(b)(1), an excess benefit means, with respect to any applicable coverage made available by an employer to an employee during any taxable period, the sum of the excess amounts determined for months during the taxable period. Under § 4980I(b)(2), the excess amount determined for any month is the excess (if any) of (A) the aggregate cost of the applicable coverage of the employee for the month over (B) an amount equal to 1/12 of the dollar limit for the calendar year in which the month occurs.

Section 4980I(d)(2)(D) provides that if the cost of applicable coverage is determined on other than a monthly basis, the cost is allocated to months in a taxable period on such basis as the Secretary may prescribe.

Treasury and IRS are considering an approach under which contributions to account-based plans would be allocated on a pro-rata basis over the period to which the contribution relates (generally, the plan year), regardless of the timing of the contributions during the period. Treasury and IRS anticipate that this allocation rule would apply to HSAs, Archer MSAs, FSAs, and HRAs that are applicable coverage. For example, if an employer contributes an amount to an HSA for an employee for a plan year, that contribution would be allocated ratably to each calendar month of the plan year, regardless of when the employer actually contributes the amount to the HSA. Similarly, if an employee elects to contribute to an FSA for a plan year, the employee's total contributions would be allocated ratably to each calendar month of the plan year, even though the entire amount contributed for the plan year would be available to reimburse qualified medical expenses on the first day of the plan year. Comments are requested on this approach as well as alternative approaches.

F. Cost of Applicable Coverage under FSAs with Employer Flex Credits

Section 4980I(d)(2)(B) provides that in the case of applicable coverage consisting of coverage under an FSA, the cost of applicable coverage is equal to the sum of (i) the amount of any contributions made under a salary reduction election, plus (ii) the cost of applicable coverage under the generally applicable rules for determining the cost of applicable coverage with respect to any reimbursement under the arrangement in excess of the contributions made under the salary reduction agreement. Thus, the cost of applicable coverage of an FSA for any plan year would be the greater of the amount of an employee's salary reduction or the total reimbursements under the FSA.

Under this general rule, in determining the portion of the cost of applicable coverage attributable to non-elective flex credits contributed to an FSA by an employer (either in combination with employee salary reduction contributions or without), the cost of the non-elective flex credit would be the amount that is actually reimbursed in excess of the employee's salary reduction election for that plan year. For example, if an

employee elects to make a salary reduction contribution to an FSA in the amount of $1,000 for a plan year and the employer makes a non-elective flex credit in the amount of $500 available to the employee under the FSA for that plan year, but the employee only has $1,200 in medical expenses reimbursed under the FSA for that plan year, the cost of applicable coverage for the FSA for the plan year would be $1,200 (comprised of the $1,000 salary reduction plus the additional $200 in reimbursements attributable to the non-elective flex credit provided by the employer) rather than the full $1,500 elected or available for the FSA for the plan year.

Under this rule, the cost of applicable coverage of the FSA would not be known until some point in time after the end of the taxable year. With respect to amounts carried over to a subsequent year, this rule would take such amounts into account in a later year if the reimbursements in the subsequent year exceeded the amount of employee salary reduction in the subsequent year.

To avoid the double counting associated with taking salary deferral amounts that are carried over from one year to another year into account in determining the cost of coverage in both the year of contribution and the subsequent year, which would be the result under the general rule outlined above, Treasury and IRS are considering providing a safe harbor. Under this safe harbor, the cost of applicable coverage for the plan year would be the amount of an employee's salary reduction without regard to carry-over amounts. Unused amounts that are carried forward would be taken into account when initially funded by salary reduction but would be disregarded when used to reimburse expenses in a later year. For example, if an employee elected to reduce his salary by $1,200 to contribute to an FSA in a given year, the FSA's cost of applicable coverage in that year would be $1,200 even if some or all of the $1,200 was not used to reimburse expenses in that year. Accordingly, if that same employee carried over $500 of unused funds that were used to reimburse expenses in the second year, and elected no new salary reduction for the second year, the FSA's cost of applicable coverage in the second year would be $0.

The possible safe harbor described above would be limited to cases in which non-elective flex credits are not available for use in the FSA. To address situations in which non-elective flex credits are available under a cafeteria plan that includes an FSA, Treasury and IRS are considering a variation on the safe harbor that would allow an FSA with non-elective flex credits to be valued under the safe harbor described in the preceding paragraph in certain situations.

Under some cafeteria plan arrangements, an employee may elect to defer amounts to the cafeteria plan that exceed the § 125(i) limit for FSAs (for 2015, $2,550), and the employer may offer additional non-elective flex credits. These amounts may be allocated to pay for various benefits available under the cafeteria plan, such as reimbursements under an FSA, dependent care assistance, and health insurance. The possible variation on the safe harbor would provide that an FSA could be treated as funded solely by salary reduction if the amount elected by the employee for the FSA were less than or equal to the maximum amount permitted by § 125(i). For example, if an employee with a $1,000 non-elective flex credit available reduces salary by an

additional $5,000 under a cafeteria plan and allocates $2,550 to the FSA, the FSA would be treated as funded solely by salary reduction. As a result, the cost of applicable coverage would be $2,550. Under the safe harbor proposal, the salary reduction taken into account would be counted only in the year an amount was elected for the FSA and, therefore, would be disregarded in later years if amounts were carried over. Comments are requested on the allocation of FSA amounts between non-elective flex credits and salary reduction when the total election for the FSA exceeds the maximum salary reduction amount permitted by § 125(i).

Treasury and IRS request comments concerning whether these potential approaches are administrable. In addition, comments are requested generally on the potential safe harbors described above and on any other issues arising from the valuation of FSAs.

G. Inclusion in Applicable Coverage of Self-Insured Coverage Includible in Income under § 105(h)

Section 4980I(d)(1)(A) defines applicable coverage to include coverage under any group health plan made available to the employee by an employer that is excludable from the employee's gross income under § 106 (or would be so excludable if it were employer-sponsored coverage).

Section 106 excludes employer-provided coverage under an accident or health plan from an employee's gross income. For an employee who then receives reimbursement for medical expenses of the employee or his family under an employer-provided accident or health plan, § 105 further excludes those reimbursement amounts from the employee's income. In the case of reimbursements paid to a highly-compensated individual under a self-insured plan that discriminates in favor of highly compensated individuals, however, § 105(h) provides that the exclusion does not apply to the extent that the amounts constitute an "excess reimbursement." The amount of the excess reimbursement is included in the gross income of the highly compensated individuals.

Section 6051(a)(14) requires employers to report on the Form W-2, Wage and Tax Statement (Form W-2), the aggregate cost of applicable coverage as defined in § 4980I(d)(1). Notice 2012-9, 2012-4 IRB 315, currently permits employers to reduce the amount reported on the Form W-2 by any excess reimbursement included in gross income by application of § 105(h).

Although excess reimbursements currently can be excluded from the cost reported on the Form W-2, Treasury and IRS do not believe such amounts reduce the cost of applicable coverage subject to tax under § 4980I. It is the coverage (excludable from income under § 106), and not the resulting benefit (excludable from income under § 105), that is applicable coverage under § 4980I, and it is the cost of that coverage that is compared to the dollar limit to determine the amount of any excise tax under § 4980I. Inclusion of excess reimbursements in an employee's income does not reduce the cost of applicable coverage subject to tax under § 4980I. Treasury and IRS anticipate that

Notice 2012-9 will be modified in the future to make excess reimbursements subject to reporting under § 6051(a)(14) and that the forms and instructions will be modified to reflect this change. Taxpayers should continue to follow Notice 2012-9 until modification of that notice is issued.

VI. AGE AND GENDER ADJUSTMENT TO THE DOLLAR LIMIT

Section 4980I(b)(3) provides two baseline per-employee dollar limits for 2018 ($10,200 for self-only coverage and $27,500 for other than self-only coverage) but also provides that various adjustments, discussed in section V.C of Notice 2015-16, will apply to increase these amounts. As stated in Notice 2015-16, Treasury and IRS intend to include rules regarding these adjustments in proposed regulations and have invited comments on the application and adjustment of the dollar limits.

One of these adjustments, set forth at § 4980I(b)(3)(C)(iii), provides for an increase in the dollar limits based on the age and gender characteristics of all employees of an employer. In accordance with the statute, no downward adjustments can occur (that is, the statute does not provide for any decrease in the dollar limits based on age and gender). Specifically, the adjustment increases the dollar limit by an amount equal to the excess of the premium cost of the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan (FEHBP standard option) if priced for the age and gender characteristics of all employees of an individual's employer (the employer's premium cost), over the premium cost for providing this coverage if priced for the age and gender characteristics of the national workforce (the national premium cost). Section 4980I(b)(3)(C)(iii)(II)(aa) provides that the adjustment is based on "the type of coverage provided such individual in such taxable period." In other words, the age and gender adjustment is determined separately for self-only coverage and other than self-only coverage.

While rating based on age and gender in the individual and small group market is subject to certain restrictions under the Affordable Care Act, the actual cost of applicable coverage generally differs based on age and gender. On average, older individuals have higher health costs than younger individuals, and, on average, younger women have higher health costs than younger men. Consequently, some employers may have higher health costs than other employers under identical benefit plans due to the age and gender characteristics of their workforce. In determining the effect that the age and gender characteristics of a workforce have on premium rates, it is not sufficient to simply compare the average age and gender of an employer's workforce to the average age and gender of the national workforce. Rather, the premium rate depends on the distribution of men and women in different age groups.

A. Determination of Age and Gender Distribution

To compare the employer's premium cost with the national premium cost, it will be necessary to establish the age and gender characteristics of the national workforce. To determine the age and gender distribution of the national workforce, Treasury and IRS are considering using the Current Population Survey as summarized in Table A-8a,

Employed Persons and Employment-Population Ratios by Age and Sex, Seasonally Adjusted (Table A-8a), published annually by the Department of Labor Bureau of Labor Statistics. This publication provides the number of individuals participating in the labor force by five-year age-bands (up to age 75 and over) and the ratio of male to female workers in each age-band. Treasury and IRS request comments on whether Table A-8a and the Current Population Survey more generally is an appropriate source of data for the age and gender characteristics of the national workforce for purposes of § 4980I and whether other sources of data for the age and gender characteristics of the national workforce should be considered.

To determine the age and gender characteristics of a particular employer's population, Treasury and IRS are considering a requirement that an employer use the first day of the plan year as a snapshot date for determining the composition of its employee population. In other words, an employer would be required to determine the age and gender of each employee as of the first day of the plan year and that distribution of age and gender characteristics would apply for purposes of the age and gender adjustment. Comments are requested on the administrability of this approach, whether it is likely to result in a representative age and gender distribution, and whether employers should be permitted to choose a different date other than the first day of the plan year to determine the age and gender characteristics of its employees. If employers were permitted to choose a different date, it is anticipated that the employer would not be permitted to vary the date from one taxable year to the next. To the extent that commenters recommend that employers be permitted to use a date other than the first day of the plan year, Treasury and IRS ask that the commenters address why permitting the use of a different date will result in a more accurate representation of the age and gender characteristics of an employer's workforce, whether flexibility in determining the snapshot date is susceptible to abuse, and any administrability issues associated with requiring a specific date or permitting flexibility in the choice of date.

B. Development of Age and Gender Adjustment Tables

Treasury and IRS anticipate that IRS will formulate and publish adjustment tables to facilitate and simplify the calculation of the age and gender adjustment. The following approach is being considered for the development of these tables and the calculation of the age and gender adjustment. All adjustments and calculations would be determined separately for self-only coverage and for other than self-only coverage.

1. Determination of average cost for FEHPB coverage. The average cost of applicable coverage under the FEHBP (FEHBP average cost) would be determined by aggregating all claims expenses of the FEHBP standard option and dividing the total by the number of coverage units. Each employee policyholder would be a coverage unit.

2. Determination of average cost for each age and gender group. Claims expense data would be sorted into groups, separating the population into male and female coverage units and further separating each gender population into multi-year age-bands. For example, the dollar amount of claims for all male individuals between the ages of 30 and 34 would be added together. The dollar amount of claims for each

group would then be divided by the number of coverage units in that age and gender group to yield the average cost for that group (group average cost). A group average cost would be calculated in this way for each of the age and gender groups.

3. Determination of group ratios. Each group average cost would be divided by the FEHBP average cost to establish the ratio (group ratio) of the group average cost to the FEHBP average cost. The group ratio would be expressed as a fraction or percentage and would be determined periodically, but less frequently than annually.

4. Determination of group premium cost. The group ratio would be multiplied by the most recent annual premium cost of the FEHBP standard option to determine the annual premium cost for each age and gender group (group premium cost). The dollar amounts representing each group premium cost would then be used to populate the adjustment tables, to be published annually.

5. Determination of national premium cost. To determine the national premium cost, each group premium cost would be multiplied by the fraction of employees in the national workforce who are in that group. The product of each of these calculations would be added together to yield the national premium cost, which would be a single dollar amount that would be published annually.

6. Determination of the employer's premium cost. Each employer would determine the fraction of its employees who are in each age and gender group. The employer would then multiply the group premium cost from the relevant adjustment table by the fraction of its employees in each group. The product of each of these calculations would be added together to yield the employer's premium cost, which would be a single dollar amount.

7. Determination of adjustment. The employer's premium cost would then be compared to the national premium cost. If the employer's premium cost exceeds the national premium cost, the excess dollar amount would be added to the dollar limit for that employer for purposes of determining the amount of any excess benefit.

With respect to step one, two different approaches are under consideration. One approach would rely on actual claims data from the FEHBP standard option. An alternative approach would rely on national claims data reflecting plans with a design similar to that of the FEHBP standard option. It is anticipated that only one approach will be adopted and that it will be applied in a uniform manner.

Treasury and IRS seek comments on this approach to the age and gender adjustment, including the alternative approaches to step one and whether the approach to the age and gender adjustment should take into account the age rating scale adopted in regulations for the individual and small group market.

VII. NOTICE AND PAYMENT

A. Notice of Calculation of Applicable Share of Excess Benefit

Section 4980I(c)(4)(A) imposes a notification requirement on the employer. Specifically, that section requires the employer to calculate for each taxable period the amount of the excess benefit subject to the tax imposed by § 4980I(a) and the applicable share of that excess benefit for each coverage provider, and to notify the Secretary and each coverage provider of the amount so determined for each coverage provider at the time and in the manner as the Secretary may prescribe.

Treasury and IRS are considering both the form in which that information must be provided to the various coverage providers and IRS, and the time at which that information must be provided. Comments are requested on the administrative and other issues raised by this notice requirement, taking into account that this process may be affected by the rules governing the period over which the cost of applicable coverage is determined as discussed in section V.B of this notice.

Treasury and IRS anticipate that calculation errors that affect the cost of applicable coverage may, in some instances, affect multiple coverage providers due to the allocation of the tax. Comments are invited on how instances of reallocation might be mitigated or avoided.

B. Payment of the § 4980I Excise Tax

Section 4980I(c)(1) provides that each coverage provider is liable for the excise tax on its applicable share of the excess benefit with respect to an employee for any taxable period, but does not specify the time and manner in which the excise tax is paid. Treasury and IRS are considering designating the filing of Form 720, Quarterly Federal Excise Tax Return, as the appropriate method for the payment of the tax. Although Form 720 generally is filed quarterly, under this approach a particular quarter of the calendar year would be designated for the use of Form 720 to pay the excise tax under § 4980I.[7]

VIII. REQUEST FOR COMMENTS

Treasury and IRS invite comments on the issues addressed in this notice and on any other issues under § 4980I. This includes an invitation to submit further comments on issues addressed in Notice 2015-16. For example, in response to Notice 2015-16, some commenters expressed concern about coordination between the excise tax under

[7] This procedure is used for payment of the fee imposed on issuers of specified health insurance policies and plan sponsors of applicable self-insured health plans to help fund the Patient-Centered Outcomes Research Institute. The fee is required to be reported only once a year on the second quarter Form 720 and paid by its due date, July 31. *See Fees on Health Insurance Policies and Self-Insured Plans for the Patient-Centered Outcomes Research Trust Fund*, 77 Fed. Reg. 72721, 72726-27 (December 6, 2012) and the Form 720 and accompanying instructions.

§ 4980I and the assessable payments under § 4980H.[8] Comments are invited on the circumstances in which the interaction between the provisions of § 4980H and § 4980I may raise concerns and on whether and how these provisions might be coordinated consistent with the statutory requirements of these provisions and in a manner that is administrable for employers and the IRS.

Although many comments submitted in response to Notice 2015-16 are not reflected in this notice, those comments are under consideration. Those comments and comments responding to this notice will be used to inform proposed regulations that will be issued in the future for further public notice and comment.

Public comments should be submitted no later than October 1, 2015. Comments should include a reference to Notice 2015-52. Send submissions to CC:PA:LPD:PR (Notice 2015-52), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2015-52), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically, via the following e-mail address: Notice.comments@irscounsel.treas.gov. Please include "Notice 2015-52" in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

IX. RELIANCE

This notice does not provide guidance under § 4980I upon which taxpayers may rely. No inference should be drawn from any provision of this notice concerning any provision of § 4980I other than those addressed in this notice or concerning any other section of the Affordable Care Act.

X. DRAFTING INFORMATION

The principal author of this notice is Karen Levin of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Ms. Levin at (202) 317-5500 (not a toll-free call).

---

[8] Generally, under § 4980H, an applicable large employer that fails to offer to its full-time employees health coverage that is affordable and provides minimum value (as defined in § 36B(c)(2)(C)(ii)) may be subject to an assessable payment if a full-time employee enrolls in a qualified health plan for which the employee receives a premium tax credit. Commenters have noted that health coverage providing no more than minimum value (or only slightly more than minimum value) may exceed the applicable dollar limit under § 4980I in certain circumstances.

LACERA

August 24, 2015

TO: Each Member
Board of Retirement

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

FOR: September 10, 2015 Board of Retirement Meeting

SUBJECT: FIDUCIARY LIABILITY INSURANCE RENEWAL

The Operations Oversight Committee voted unanimously at its meeting on August 13, 2015, to forward this request to the Board of Retirement to authorize the purchase of Fiduciary Liability Insurance for the October 6, 2015 renewal with the following insurance carriers:

Fiduciary Insurance - LACERA Trust Fund

- **Hudson Insurance Company; Limit: $15 million (primary)**
- **Hartford Insurance Group (via Twin City Fire Insurance Co.); Limit $10 million excess of $15 million**

Fiduciary Insurance - OPEB Trust Fund

- **Hudson Insurance Company; Limit: $5 million**

EXECUTIVE SUMMARY

For over a decade, LACERA has been purchasing Fiduciary Liability Insurance to protect the Trust Funds against potential losses resulting from any breach of fiduciary duty claims. Board members and certain LACERA employees can also be held personally liable for these claims. LACERA's current fiduciary insurance coverage consists of Federal Insurance Company ("Chubb") at $15 million, Hartford at $10 million (LACERA Trust Fund), and Federal Insurance Company ("Chubb") at $5 million (OPEB Trust Fund). These plans are set to expire on October 6, 2015.

LACERA contracts with an insurance broker to research appropriate insurance plans, conduct the competitive bidding process, and provide recommendations on packages for LACERA to consider. LACERA directed, our current broker, Kaercher Campbell & Associates Insurance (KCAIB) to solicit alternate quotes to obtain the most comprehensive coverage for the most competitive price. To achieve the desired results, the Broker sought optional limits and retentions, providing five insurance carrier quotes for consideration.

- Federal Insurance Company ("Chubb")
- Twin City Fire Insurance Company ("Hartford")
- RLI Insurance
- Hudson Insurance
- AIG

RENEWAL CRITERIA

LACERA requires a total of $25M coverage to protect any person acting in a fiduciary capacity in an event of a breach of fiduciary duty. The highest limit that any of the fiduciary insurance carriers are willing to underwrite for the coverage is $15M; therefore, LACERA's program is layered with $15M primary and $10M excess to reach the desired coverage of $25M.

LACERA requested KCAIB to seek quotes utilizing standard industry criteria which enabled them to successfully negotiate competitive options for renewal. Fiduciary Liability limits, retentions, and premiums are primarily based on the following factors:

- Amount of Net plan assets - $47.7 billion
- Number of participants - 157,779
- Funding status - 75%

Based on LACERA's coverage requirements, Administrative Services conducted a comparative analysis of each proposed carrier policy against the expiring policies using the following criteria:

- Cost (Most comprehensive coverage for the most competitive price)
- Thorough review of each policy (side-by-side comparison)
- Best protects the Board Members and LACERA employees

From the five insurance carriers listed above in the Executive Summary, LACERA determined Hudson Insurance Company and Twin City Fire Insurance Company ("Hartford") provide comprehensive coverage at the most competitive price.

RENEWAL SELECTION

Fiduciary Insurance - LACERA Trust Fund

For the LACERA Trust Fund, the recommendation is to purchase the Hudson Insurance Company policy as the primary layer with the policy limits of $15 million and Twin City Fire Insurance Company ("Hartford") will underwrite the excess policy in the amount of $10 million. The combined annualized premium for both policies is $223,250.00, a 21% decrease in premium over the current expiring rates. (See Appendix A)

When comparing the policy forms, the Hudson Insurance Company's policy was more comprehensive than the other quoted carriers indentified above, including the current Chubb policy. Below are additional advantages offered by Hudson Insurance Company that the other insurance carriers lack in policy form:

- Broader "Who is an Insured" - Includes the term "Administrator of any Plan"
- Choice of Counsel versus carrier panel counsel
- Offers $100K of Cyber Restoration and Notification Coverage
- Defense Cost Allegation - 100% Defense if any one allegation is triggered
- Cancellation - Non rescindable nor cancellable by Insurer (except nonpayment of premium)
- Coverage for Benefits Miscalculation (overpayment)

Fiduciary Insurance - OPEB Trust Fund

The recommendation for the OPEB Trust Fund is to purchase the Hudson Insurance Company policy with policy limits of $5 million. The annual premium for the policy is $15,000.00, a 1% decrease in premium over the current expiring rate. (See Appendix A)

ADDITIONAL PROTECTION

Waiver of Recourse

A waiver of recourse is an endorsement to a fiduciary liability insurance policy that prevents an insurance carrier from exercising its subrogation rights against an insured fiduciary (LACERA). LACERA purchases fiduciary liability insurance to protect the LACERA Trust Fund and the OPEB Trust Fund against losses resulting from a breach of fiduciary duty.

Members of both Boards and specific staff may have some exposure to fiduciary liability since they make decisions impacting both the LACERA Trust Fund and the OPEB Trust Fund. Depending on their role, Board Members and staff have the option

to purchase the waiver of recourse insurance for both trust funds or buy it separately. The cost of each policy per person is as follows:

- LACERA trust fund - $25.00 per person
- OPEB trust fund - $25.00 per person

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD approves the purchase of Fiduciary Liability Insurance for the October 6, 2015 renewal with the following insurance carriers:

Fiduciary Insurance - **LACERA Trust Fund**

- Hudson Insurance Company; Limit: $15 million (primary)
- Hartford Insurance Group (via Twin City Fire Insurance Co.); Limit $10 million excess of $15 million

Fiduciary Insurance - **OPEB Trust Fund**

- Hudson Insurance Company; Limit: $5 million

Enclosure:
Fiduciary Insurance Pricing Matrix – Appendix A

APPENDIX A

Fiduciary Insurance - LACERA Trust Fund

Coverage	Expiring Annual Premium 10/06/2014-15 *Chubb/Hartford*	Proposed Annual Premium 10/06/2015-16 *Hudson/Hartford*	Variance
Primary Fiduciary Liability – ($15MM Primary Limit)	Annual Premium $192,903	Annual Premium $152,250	**-21%**
Excess Liability - ($10MM excess of $15MM)	Annual Premium $71,000	Annual Premium $71,000	**n/a**
TOTAL PREMIUM	**$ 263,903**	**$ 223,250**	**-21%**

Fiduciary Insurance - OPEB Trust Fund

Coverage	Expiring Annual Premium 10/06/2014-15 *Chubb*	Proposed Annual Premium 10/06/2015-16 *Hartford*	Variance
Fiduciary Liability Insurance ($5 MM Limit)	Annual Premium $15,163	Annual Premium $15,000	**-1%**
Total Premium	**$15,163**	**$15,000**	**-1%**

LACERA

August 28, 2015

TO: Each Member
Board of Retirement

FROM: Insurance, Benefits and Legislative Committee
Les Robbins, Chair
Alan Bernstein, Vice Chair
William de la Garza
Vivian H. Gray
Ronald Okum, Alternate

FOR: September 10, 2015 Board of Retirement Meeting

SUBJECT: **U.S. Senate Bill 1651 – Social Security Fairness Act of 2015**

RECOMMENDATION

That the Board of Retirement adopt a "Support" position on S 1651, which would enact the "Social Security Fairness Act of 2015."

DISCUSSION

U. S. Senate Bill 1651, also known as the "Social Security Fairness Act of 2015," seeks to amend Title II of the Social Security Act to repeal the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP). This is an identical bill to U.S. House Bill 973, on which the Board of Retirement adopted a "Support" position on July 9, 2015. The Board of Retirement also adopted a "Support" position on California's Senate Joint Resolution 1 on May 21, 2015, which requests the President and the Congress of the United States to pass legislation repealing the GPO and WEP.

Under the GPO, any Social Security benefit received by a spouse or widow(er) will be offset if the worker also receives a federal, state, or local government pension based on work where he or she did not participate in Social Security. In some cases, the GPO may totally eliminate the Social Security benefit. Under the WEP, a social security or disability benefit is figured using a modified formula if the worker is entitled to a pension from a job where he or she did not participate in Social Security. The WEP reduces but does not totally eliminate the Social Security benefit.

LACERA members are affected by both offsets since the County no longer participates in the Social Security program.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD adopt a “Support” position on S 1651, which would enact the “Social Security Fairness Act of 2015.”

Attachments

2015. Leg.S 1651.BOR.082815

LEGISLATIVE ANALYSIS
U.S. SENATE BILL 1651

AUTHOR:	**Sen. Brown, Sherrod**
INTRODUCED:	**June 23, 2015**
SPONSOR:	**Author**
SUMMARY:	**U. S. Senate Bill 1651 is also known as the "Social Security Fairness Act of 2015."** **The bill amends Title II of the Social Security Act to repeal:** **1. Government pension offset requirements applicable to husband's and wife's insurance benefits, widow's and widower's insurance benefits, and mother's and father's insurance benefits with respect to Social Security payments; and** **2. Windfall elimination requirements with respect to the computation of an individual's primary insurance amount.**
ANALYSIS:	**LACERA members are affected by both offsets since the County no longer participates in the Social Security program.** **This is an identical bill to U.S. House Bill 973, which the Board of Retirement adopted a "Support" position on July 9, 2015.** **The Board of Retirement also adopted a "Support" position on California's Senate Joint Resolution 1 on May 21, 2015, which requests the President and the Congress of the United States to pass legislation repealing the Government Pension Offset and the Windfall Elimination Provision.**
IBLC RECOMMENDATION	**Support (08-13-15)**
STAFF RECOMMENDATION:	**Support**
PREPARED BY:	**Barry W. Lew, Legislative Affairs Officer**
DATED:	**August 28, 2015**

114TH CONGRESS
1ST SESSION

S. 1651

To amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2015

Mr. BROWN (for himself, Ms. COLLINS, Ms. WARREN, Ms. HIRONO, Mr. BLUMENTHAL, Mr. VITTER, Ms. MURKOWSKI, Mr. WHITEHOUSE, Mr. REED, Ms. BALDWIN, Mr. FRANKEN, Mr. UDALL, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Social Security Fairness Act of 2015''.

SEC. 2. REPEAL OF GOVERNMENT PENSION OFFSET PROVISION.

(a) IN GENERAL.—Section 202(k) of the Social Security Act (42 U.S.C. 402(k)) is amended by striking paragraph (5).

(b) CONFORMING AMENDMENTS.—

(1) Section 202(b)(2) of the Social Security Act (42 U.S.C. 402(b)(2)) is amended by striking ''subsections (k)(5) and (q)'' and inserting ''subsection (q)''.

(2) Section 202(c)(2) of such Act (42 U.S.C. 402(c)(2)) is amended by striking ''subsections (k)(5) and (q)'' and inserting ''subsection (q)''.

(3) Section 202(e)(2)(A) of such Act (42 U.S.C. 402(e)(2)(A)) is amended by striking ''subsection (k)(5), subsection (q),'' and inserting ''subsection (q)''.

(4) Section 202(f)(2)(A) of such Act (42 U.S.C. 402(f)(2)(A)) is amended by striking ''subsection (k)(5), subsection (q)'' and inserting ''subsection (q)''.

SEC. 3. REPEAL OF WINDFALL ELIMINATION PROVISIONS.

(a) IN GENERAL.—Section 215 of the Social Security Act (42 U.S.C. 415) is amended—

(1) in subsection (a), by striking paragraph (7);

(2) in subsection (d), by striking paragraph (3); and

(3) in subsection (f), by striking paragraph (9).

(b) CONFORMING AMENDMENTS.—Subsections (e)(2) and (f)(2) of section 202 of such Act (42 U.S.C. 402) are each amended by striking ''section 215(f)(5), 215(f)(6), or 215(f)(9)(B)'' in subparagraphs (C) and (D)(i) and inserting ''paragraph (5) or (6) of section 215(f)''.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act for months after December 2015. Notwithstanding section 215(f) of the Social Security Act, the Commissioner of Social Security shall adjust primary insurance amounts to the extent necessary to take into account the amendments made by section 3.

○

Government Pension Offset

A law that affects spouses and widows or widowers

If you receive a pension from a federal, state or local government based on work where you did not pay Social Security taxes, your Social Security spouse's or widow's or widower's benefits may be reduced. This fact sheet provides answers to questions you may have about the reduction.

How much will my Social Security benefits be reduced?

Your Social Security benefits will be reduced by two-thirds of your government pension. In other words, if you get a monthly civil service pension of $600, two-thirds of that, or $400, must be deducted from your Social Security benefits. For example, if you are eligible for a $500 spouse's, widow's or widower's benefit from Social Security, you will receive $100 per month from Social Security ($500 – $400 = $100).

If you take your government pension annuity in a lump sum, Social Security still will calculate the reduction as if you chose to get monthly benefit payments from your government work.

Why will my Social Security benefits be reduced?

Benefits we pay to wives, husbands, widows and widowers are "dependent's" benefits. These benefits were established in the 1930s to compensate spouses who stayed home to raise a family and who were financially dependent on the working spouse. But as it has become more common for both spouses in a married couple to work, each earned his or her own Social Security retirement benefit. The law has always required that a person's benefit as a spouse, widow or widower be offset dollar for dollar by the amount of his or her own retirement benefit.

In other words, if a woman worked and earned her own $800 monthly Social Security retirement benefit, but she also was due a $500 wife's benefit on her husband's Social Security record, we could not pay that wife's benefit because her own Social Security benefit offset it. But, before enactment of the Government Pension Offset provision, if that same woman was a government employee who did not pay into Social Security, and who earned an $800 government pension, there was no offset, and we were required to pay her a full wife's benefit in addition to her government pension.

If this government employee's work had instead been subject to Social Security taxes, any Social Security benefit payable as a spouse, widow or widower would have been reduced by the person's own Social Security retirement benefit. In enacting the Government Pension Offset provision, Congress intended to ensure that when determining the amount of spousal benefit, government employees who do not pay Social Security taxes would be treated in a similar manner to those who work in the private sector and do pay Social Security taxes.

When won't my Social Security benefits be reduced?

Generally, your Social Security benefits as a spouse, widow or widower will not be reduced if you:

- Are receiving a government pension that is not based on your earnings; or
- Are a federal (including Civil Service Offset), state or local government employee whose government pension is based on a job where you were paying Social Security taxes; and
  - —you filed for and were entitled to spouse's, widow's or widower's benefits before April 1, 2004; or
  - —your last day of employment (that your pension is based on) is before July 1, 2004; or

—you paid Social Security taxes on your earnings during the last 60 months of government service. (Under certain conditions, fewer than 60 months may be required for people whose last day of employment falls after June 30, 2004, and before March 2, 2009.)

Also, there are other situations where Social Security benefits as a spouse, widow or widower will not be reduced; for example, if you:

- Are a federal employee who elected to switch from the Civil Service Retirement System (CSRS) to the Federal Employees' Retirement System (FERS) after December 31, 1987; and
  - —you filed for and were entitled to spouse's, widow's or widower's benefits before April 1, 2004; or
  - —your last day of service (that your pension is based on) is before July 1, 2004; or
  - —you paid Social Security taxes on your earnings for 60 months or more during the period beginning January 1988 and ending with the first month of entitlement to benefits; or
- Received or were eligible to receive a government pension before December 1982 and meet all the requirements for Social Security spouse's benefits in effect in January 1977; or
- Received or were eligible to receive a federal, state or local government pension before July 1, 1983, and were receiving one-half support from your spouse.

Note: *A Civil Service Offset employee is a federal employee, rehired after December 31, 1983, following a break in service of more than 365 days, with five years of prior CSRS coverage.*

What about Medicare?

Even if you do not receive cash benefits based on your spouse's work, you still can get Medicare at age 65 on your spouse's record if you are not eligible for it on your own record.

Can I still get Social Security benefits from my own work?

The offset applies only to Social Security benefits as a spouse or widow or widower. However, your own benefits may be reduced because of another provision of the law. For more information, ask for *Windfall Elimination Provision* (Publication No. 05-10045).

Contacting Social Security

For more information and to find copies of our publications, visit our website at ***www.socialsecurity.gov*** or call toll-free, **1-800-772-1213** (for the deaf or hard of hearing, call our TTY number, **1-800-325-0778**). We treat all calls confidentially. We can answer specific questions from 7 a.m. to 7 p.m., Monday through Friday. Generally, you'll have a shorter wait time if you call during the week after Tuesday. We can provide information by automated phone service 24 hours a day.

We also want to make sure you receive accurate and courteous service. That is why we have a second Social Security representative monitor some telephone calls.

Printed on recycled paper

Social Security Administration
SSA Publication No. 05-10007
ICN 451453
Unit of Issue - HD (one hundred)
June 2012 (March 2011 edition may be used)

Windfall Elimination Provision

2015

Your Social Security retirement or disability benefits may be reduced

The Windfall Elimination Provision may affect how we calculate your retirement or disability benefit. If you work for an employer who does not withhold Social Security taxes from your salary, such as a government agency or an employer in another country, any pension you get from that work may reduce your Social Security benefits.

When your benefits may be affected

This provision may affect you when you earn a pension from an employer who didn't withhold Social Security taxes ***and*** you qualify for Social Security retirement or disability benefits from work in other jobs for which you did pay taxes.

The Windfall Elimination Provision may apply if:

- You reached 62 after 1985; or
- You became disabled after 1985; and
- You first became eligible for a monthly pension based on work where you did not pay Social Security taxes after 1985, even if you are still working.

This provision also affects Social Security benefits for people who performed federal service under the Civil Service Retirement System (CSRS) after 1956. Your Social Security benefit amounts won't be reduced if you performed federal service under a system such as the Federal Employees' Retirement System in which Social Security taxes were withheld.

How it works

Social Security benefits are intended to replace only some of a worker's pre-retirement earnings.

We base your Social Security benefit on your average monthly earnings adjusted for inflation. We separate your average earnings into three amounts and multiply the amounts using three factors. For example, for a worker who turns 62 in 2015, the first $826 of average monthly earnings is multiplied by 90 percent; the next $4,980 by 32 percent; and the balance by 15 percent. The sum of the three amounts equals the total monthly payment amount.

When we apply this formula, the percentage paid to lower-paid workers is higher than highly paid workers. For example, workers making $3,000 per month could receive a benefit of $1,439 (48 percent) of their pre-retirement earnings. For a worker making $8,000 per month, the benefit could be $2,666 (33 percent).

Lower-paid workers could get a Social Security benefit that equals about 55 percent of their pre-retirement earnings. The average replacement rate for highly paid workers is about 25 percent.

Why we use a different formula

Before 1983, people whose primary job wasn't covered by Social Security had their Social Security benefits calculated as if they were long-term, low-wage workers. They had the advantage of receiving a Social Security benefit representing a higher percentage of their earnings, plus a pension from a job for which they didn't pay Social Security taxes. Congress passed the Windfall Elimination Provision to remove that advantage.

Under the provision, we reduce the 90 percent factor in our formula and phase it in for workers who reached age 62 or became disabled between 1986 and 1989. For those who reach 62 or became disabled in 1990 or later, we reduce the 90 percent factor to 40 percent.

Some exceptions

The Windfall Elimination Provision doesn't apply if:

- You are a federal worker first hired after December 31, 1983;
- You were employed on December 31, 1983, by a nonprofit organization that did not withhold Social Security taxes from your pay at first, but then began withholding Social Security taxes from your pay;
- Your only pension is for railroad employment;
- The only work you performed for which you did not pay Social Security taxes was before 1957; or

(over)

- You have 30 or more years of substantial earnings under Social Security.

The Windfall Elimination Provision doesn't apply to survivors benefits. We may reduce widows or widowers benefits because of another law. For more information, read *Government Pension Offset* (Publication No. 05-10007).

See the first table that lists substantial earnings for each year.

The second table shows the percentage used depending on the number of years of substantial earnings. If you have 21 to 29 years of substantial earnings, we reduce the 90 percent factor to between 45 and 85 percent.

To see the maximum amount we could reduce your benefit, visit ***www.socialsecurity.gov/retire2/wep-chart.htm***.

A guarantee

The law protects you if you get a low pension. We will not reduce your Social Security benefit more than half of your pension for earnings after 1956 on which you did not pay Social Security taxes.

Contacting Social Security

Visit ***www.socialsecurity.gov*** anytime to apply for benefits, open a ***my*** **Social Security** account, find publications, and get answers to frequently asked questions. Or, call us toll-free at **1-800-772-1213** (for the deaf or hard of hearing, call our TTY number, **1-800-325-0778**). We can answer case-specific questions from 7 a.m. to 7 p.m., Monday through Friday. Generally, you'll have a shorter wait time if you call after Tuesday. We treat all calls confidentially. We also want to make sure you receive accurate and courteous service, so a second Social Security representative monitors some telephone calls. We can provide general information by automated phone service 24 hours a day. And, remember, our website, ***www.socialsecurity.gov***, is available to you anytime and anywhere!

Year	Substantial earnings
1937–1954	$900
1955–1958	$1,050
1959–1965	$1,200
1966–1967	$1,650
1968–1971	$1,950
1972	$2,250
1973	$2,700
1974	$3,300
1975	$3,525
1976	$3,825
1977	$4,125
1978	$4,425
1979	$4,725
1980	$5,100
1981	$5,550
1982	$6,075
1983	$6,675
1984	$7,050
1985	$7,425
1986	$7,875
1987	$8,175
1988	$8,400
1989	$8,925
1990	$9,525

Year	Substantial earnings
1991	$9,900
1992	$10,350
1993	$10,725
1994	$11,250
1995	$11,325
1996	$11,625
1997	$12,150
1998	$12,675
1999	$13,425
2000	$14,175
2001	$14,925
2002	$15,750
2003	$16,125
2004	$16,275
2005	$16,725
2006	$17,475
2007	$18,150
2008	$18,975
2009–2011	$19,800
2012	$20,475
2013	$21,075
2014	$21,750
2015	$22,050

Years of substantial earnings	Percentage
30 or more	90 percent
29	85 percent
28	80 percent
27	75 percent
26	70 percent
25	65 percent
24	60 percent
23	55 percent
22	50 percent
21	45 percent
20 or less	40 percent

Printed on recycled paper

Social Security Administration
SSA Publication No. 05-10045
ICN 460275
Unit of Issue - HD (one hundred)
January 2015 (Recycle prior editions)

LACERA

FOR INFORMATION ONLY

August 31, 2015

TO: Each Member,
Board of Retirement

FROM: Beulah S. Auten JJ FOR BSA
Chief Financial Officer

FOR: September 10, 2015 Board of Retirement Meeting

SUBJECT: **2016 STAR COLA PROGRAM**

Your Board's actuary, Milliman, Inc., confirmed in the attached memo, staff's determination that there are no current retirees or beneficiaries entitled to additional Supplemental Targeted Adjustment for Retirees (STAR) Cost-of-Living-Adjustment benefits for Program Year 2016 (Attachment 1).

For the calendar year ended in 2014, the Consumer Price Index (CPI) percentage increased only 0.73%, which resulted in a 0.50% Cost-of-Living Adjustment (COLA) when rounded to the nearest one-half of one percent as prescribed by law. This means the inflation increase is less than the statutory COLA granted to Plans A – D, as well as plan members, whose membership are governed by the Public Employees Pension Reform Act (PEPRA). Therefore, all eligible members in Plans A, B, C, and D, including PEPRA Plans C and G have COLA Accumulation accounts below the 20% threshold necessary for granting additional STAR benefits (Attachment 2).

Background

COLA

Sections 31870 and 31870.1 of the Government Code provide for a maximum annual cost-of-living increase to be applied to retirement allowances, optional death allowances, or annual death allowances. These increases are 3% for Plan A retirees and survivors; 2% for Plans B, C, D, PEPRA Plans C and G; and up to 2% for certain Plan E retirees and survivors. These two sections also provide for an accumulation of the annual percentage difference between the CPI and the maximum cost-of-living increase. The accumulated percentage carryover is known as the COLA Accumulation. Although certain Plan E

members are eligible for the April 1 COLA, the law does not provide for a STAR COLA benefit.[1]

COLA Accumulation Calculation

The CPI percentage change from January through December is compared to the maximum allowable cost-of-living percentage increase payable by LACERA under Sections 31870 and 31870.1. In years where the change in CPI is greater than the maximum COLA increase, the difference between these two percentages is accumulated annually for each retiree. The accumulation of differences from each year reflects how much purchasing power has been lost from a retiree's original retirement benefit. By law, the Board of Retirement may provide STAR increases after the accumulation exceeds 20%.

STAR COLA

The Board of Retirement began the STAR Program in 1990 to restore the member's purchasing power that had been eroded by inflation in excess of the protection provided by the statutory Cost-of-Living Adjustment Program (COLA Program). Since its inception, the Board of Retirement has continued the STAR Program and its commitment to fund the program as long as it is economically feasible to do so. Non-contributory members in Plan E are not eligible for STAR COLA benefits.

Since 1990 and through 2000, the STAR Program existed as an ad-hoc benefit designed to provide our contributory plan members protection against rising inflation beyond the protection provided by our statutory COLA Program, and successfully restored LACERA retiree purchasing power to the then maximum allowable 75% level.

On September 4, 2000, the California Governor signed into law a provision allowing the Board of Retirement to raise the purchasing power protection to a maximum of 80% and to provide the ability to make permanent the STAR Program using excess earnings.[2] This change provided the Board of Retirement the flexibility to continue the STAR Program as an ad-hoc benefit or the opportunity to make permanent the STAR Program using excess earnings. Except for Program Years 2005 and 2010 through 2015, the Board of Retirement made permanent the 2001 through 2009 STAR Programs at an 80% level.

For STAR Program Years 2005 and 2010 through 2015, the growth in inflation was below the statutory COLA granted to contributory plan members, which provided sufficient protection against the diminished purchasing power. All eligible members had COLA Accumulation accounts below the 20% threshold for providing additional STAR benefits. Existing STAR participants and their eligible beneficiaries continued receiving these benefits without further action by your Board.

---

[1] Effective June 4, 2002, Plan E members and their survivors are eligible for COLA. The portion of the COLA percentage received by each Plan E member is a ratio of the member's service credit earned on and after June 4, 2002 to total service credit.

[2] Excess Earnings are actual cash earnings from the investment portfolio earned during the previous year that remain unspent after paying for costs to administer the system, costs to invest the portfolio, paying interest to the member and employer accounts, and satisfying the 1% contingency reserve requirement in Code Sections 31592 and 31592.2.

Conclusion

In 2014, the CPI percentage increased 0.73%, which resulted in a 0.50% COLA when rounded to the nearest one-half of one percent, as prescribed by law. This means the inflation increase is below the statutory COLA granted to Plan A members and equal to the statutory COLA granted to Plans B, C, and D, as well as PEPRA Plans C and G members. Similar to Program Years 2005 and 2010 through 2015, all eligible members in Plans A, B, C, and D, including PEPRA Plans C and G have COLA Accumulation accounts below the 20% threshold for providing additional STAR benefits for Program Year 2016. Non-contributory Plan E members are not eligible for STAR COLA benefits. Existing STAR participants and their eligible beneficiaries will continue receiving these benefits without further action by your Board.

RH:BSA:lg
STAR 2016 memo.doc

Attachments

REVIEWED AND APPROVED:

8/31/2015

Robert Hill
Assistant Executive Officer

Date

Milliman

1301 Fifth Avenue
Suite 3800
Seattle, WA 98101-2605
USA

Tel +1 206 624 7940
Fax +1 206 623 3485

milliman.com

VIA EMAIL ONLY

August 31, 2015

Mr. Gregg Rademacher
Chief Executive Officer
LACERA
P. O. Box 7060
Pasadena, CA 91109-7060

Re: STAR COLA for 2016

Dear Gregg:

Per our statement of work, we have reviewed the Supplemental Target Adjustment for Retirees (STAR) COLA program as of January 1, 2016. There are no LACERA retirees or beneficiaries eligible for additional STAR payments as of that date.

Under the STAR COLA, each retiree and beneficiary whose benefit has lost more than 20% of its value is eligible to receive, upon Board approval, an increased benefit payment effective January 1, 2016. The loss of value is measured by the Accumulation Account which is calculated by LACERA staff based on prior benefit payments and the increases in the Los Angeles-Riverside-Orange County, CA Consumer Price Index – All Urban Consumers.

For the year ending in 2014, the increase in CPI was approximately 0.7%, which results in a COLA of 0.5% when rounded to the nearest one-half of one percent, as prescribed by law. Since this increase is less than the statutory COLA provided to Plan A-D members no member had an increase in their Accumulation Account from 2014 to 2015. Note that Plan E members are not eligible for the STAR COLA. As of April 2015, all Accumulation Accounts remain less than 20.0% (the threshold for providing STAR benefits). Therefore, no members are eligible for a STAR COLA in 2016.

Actuarial Certification

Milliman's work is prepared solely for the internal business use of LACERA. To the extent that Milliman's work is not subject to disclosure under applicable public records laws, Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit or create a legal duty to any third party recipient of its work product. Milliman's consent to release its work product to any third party may be conditioned on the third party signing a Release, subject to the following exceptions:

(a) The System may provide a copy of Milliman's work, in its entirety, to the System's professional service advisors who are subject to a duty of confidentiality and who agree to not use Milliman's work for any purpose other than to benefit the System.

This work product was prepared solely for LACERA for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work. Milliman recommends that third parties be aided by their own actuary or other qualified professional when reviewing the Milliman work product.

Milliman

(b) The System may provide a copy of Milliman's work, in its entirety, to other governmental entities, as required by law.

No third party recipient of Milliman's work product should rely upon Milliman's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

The consultants who worked on this assignment are pension actuaries. Milliman's advice is not intended to be a substitute for qualified legal or accounting counsel.

The signing actuaries are independent of the plan sponsor. We are not aware of any relationship that would impair the objectivity of our work.

On the basis of the foregoing, we hereby certify that, to the best of our knowledge and belief, this letter is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices.

I, Nick Collier, am a member of the American Academy of Actuaries and an Associate of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

If you have any further questions, please let us know.

Sincerely,

Nick J. Collier, ASA, EA, MAAA
Consulting Actuary

Craig J. Glyde, ASA, EA, MAAA
Consulting Actuary

NJC/CJG/nlo

cc: Ms. Beulah Auten
Mr. Mark Olleman

This work product was prepared solely for LACERA for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work. Milliman recommends that third parties be aided by their own actuary or other qualified professional when reviewing the Milliman work product.

Attachment 2

STAR COLA

Percentages for 2016

Retirement Date	Plan A		Plans B, C, D		PEPRA Plans G and C**	
	April 2015 COLA Accumulation	2016 STAR % Increase	April 2015 COLA Accumulation	2016 STAR % Increase	April 2015 COLA Accumulation	2016 STAR % Increase
Before 4/1/77	8.0	*	-	-		
4/1/1977 - 3/31/1978	8.0	*	15.0	*		
4/1/1978 - 3/31/1979	8.0	*	15.0	*		
4/1/1979 - 3/31/1980	8.0	*	15.0	*		
4/1/1980 - 3/31/1981	8.0	*	15.0	*		
4/1/1981 - 3/31/1982	1.7	*	15.0	*		
4/1/1982 - 3/31/1983	0.0	*	15.0	*		
4/1/1983 - 3/31/1984	0.0	*	15.0	*		
4/1/1984 - 3/31/1985	0.0	*	15.0	*		
4/1/1985 - 3/31/1986	0.0	*	15.0	*		
4/1/1986 - 3/31/1987	0.0	*	15.0	*		
4/1/1987 - 3/31/1988	0.0	*	15.0	*		
4/1/1988 - 3/31/1989	0.0	*	15.0	*		
4/1/1989 - 3/31/1990	0.0	*	15.0	*		
4/1/1990 - 3/31/1991	0.0	*	12.4	*		
4/1/1991 - 3/31/1992	0.0	*	7.8	*		
4/1/1992 - 3/31/1993	0.0	*	7.2	*		
4/1/1993 - 3/31/1994	0.0	*	7.2	*		
4/1/1994 - 3/31/1995	0.0	*	7.2	*		
4/1/1995 - 3/31/1996	0.0	*	7.2	*		
4/1/1996 - 3/31/1997	0.0	*	7.2	*		
4/1/1997 - 3/31/1998	0.0	*	7.2	*		
4/1/1998 - 3/31/1999	0.0	*	7.2	*		
4/1/1999 - 3/31/2000	0.0	*	7.2	*		
4/1/2000 - 3/31/2001	0.0	*	6.9	*		
4/1/2001 - 3/31/2002	0.0	*	5.2	*		
4/1/2002 - 3/31/2003	0.0	*	5.1	*		
4/1/2003 - 3/31/2004	0.0	*	3.4	*		
4/1/2004 - 3/31/2005	0.0	*	3.4	*		
4/1/2005 - 3/31/2006	0.0	*	1.0	*		
4/1/2006 - 3/31/2007	0.0	*	0.0	*		
4/1/2007 - 3/31/2008	0.0	*	0.0	*		
4/1/2008 - 3/31/2009	0.0	*	0.0	*		
4/1/2009 - 3/31/2010	0.0	*	0.0	*		
4/1/2010 - 3/31/2011	0.0	*	0.0	*		
4/1/2011 - 3/31/2012	0.0	*	0.0	*		
4/1/2012 - 3/31/2013	0.0	*	0.0	*		
4/1/2013 - 3/31/2014	0.0	*	0.0	*	0.0	*
4/1/2014 - 3/31/2015	0.0	*	0.0	*	0.0	*

* Not eligible for STAR increase in 2016

** PEPRA Plans G and C were effective January 1, 2013.

LACERA

Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101

LACERA

Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101

LACERA

Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101