

**LACERA**

Los Angeles County Employees Retirement Association



**BOARD OF RETIREMENT  
REGULATIONS**



*Managing the Benefits*

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# REGULATIONS

## BOARD OF RETIREMENT

Adopted Pursuant to Government Code  
Section 31525

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# REGULATIONS

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## I. ADMINISTRATION

### **1. Election of Chair**

At the first regular meeting in January, the Board of Retirement shall elect one of its members chair for a term of one year or until his or her successor is duly elected and qualified.

### **2. Election of Vice Chair**

At the first regular meeting in January, the Board of Retirement shall elect one of its members vice chair for a term of one year or until his or her successor is duly elected and qualified.

### **3. Election of Secretary**

At the first regular meeting in January, the Board of Retirement shall elect one of its members secretary for a term of one year or until his or her successor is duly elected and qualified.

### **4. Election of Audit Committee Member**

At the first regular meeting in January, the Board of Retirement shall elect one of its members to serve on the Audit Committee of the Boards of Retirement and Investments for a term of one year or until his or her successor is duly elected.

### **5. Filling of Vacancy in Office**

In the event of a vacancy in the office of chair, vice chair or secretary, the Board of Retirement shall, at its next regular meeting, elect one of its members to fill such vacancy for the remainder of the term.

### **6. Board Member's Responsibility**

A Board member shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as local agency officer or employee or with the duties, functions, or responsibilities of the Board. Such member shall not perform any work, service, or counsel for compensation outside of his or her Board responsibilities where any part of his or her efforts will be subject to approval by any other member or members of the Board.

### **7. Alternate Retired Member**

Pursuant to Government Code Section 31520.5, the Board of Retirement shall include an alternate retired member whose duties shall include:

(a) **Participation in Board Meetings**

The alternate retired member shall vote as a member of the Board of Retirement only in the absence of the regular retired member. However, the alternate retired member may sit with the Board during the meeting and may participate in deliberations and make motions.

- (b) Participation in Committee Meetings  
The alternate retired member is eligible to serve as a member of Board committees to the same extent as other Board members.
- (c) Copies of Agenda Material  
The alternate retired member shall be entitled to receive all agenda materials.
- (d) Training and Travel  
The alternate retired member shall be entitled to all training available to Board members.
- (e) Board Office  
The alternate retired member is eligible to serve as an officer of the Board.
- (f) Compensation  
The alternate retired member shall be entitled to the same compensation as the regular retired member including compensation for attending a meeting at which the regular member is present.

## II. MEETINGS

### 1. Regular Meetings

Regular meetings of the Board of Retirement shall be held on the first Wednesday and the Thursday following the second Wednesday in each month at 9:00 a.m. The regular meeting may be rescheduled for an earlier or later time or day by majority vote of the members present at a regular meeting of the Board of Retirement. The Chief Executive Officer shall give notice of a rescheduled regular meeting by delivering, personally or by mail, written notice to each member of the Board and to each local newspaper of general circulation, radio or television station that has requested notice of special meetings. The notice shall be given as soon as practical and in sufficient time so as to be received at least 24 hours before the time of the rescheduled meeting.

### 2. Special Meetings

Special meetings of the Board of Retirement may be called in the manner provided by Section 54956 of the Government Code.

### 3. Rules of Order

- (a) Except as otherwise provided herein, the rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the Board of Retirement in its proceedings.
  - (1) The Chair shall have the same rights to vote and participate in discussions as any other member of the Board without relinquishing the Chair.
  - (2) The Chair shall be disqualified to preside over any Board proceedings related to allegations of misconduct by the Chair. In such matters, the gavel shall be passed to the Vice-Chair or other officer designated to preside pursuant to Robert's Rules of Order.
  - (3) In the event of a tie vote on a disability retirement application, the decision of the Board will be suspended until the next meeting at which the Board considers

disability retirement applications. If a tie vote still results, the disability application will be deemed denied.

- (4) In the event there is held a joint meeting of the full Board and a committee of the Board, the Board shall take no action at such joint meeting and the only action that the committee may take is approval of a recommendation to take further action at a subsequent meeting of the Board. The agenda of any such joint meeting shall include the following note:

Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.

- (b) The order of business shall be determined by formal action of the Board of Retirement.

#### **4. Quorum**

Five members of the Board of Retirement constitute a quorum. A quorum of the Board shall not be required for the Board to meet jointly with a committee of the Board provided the requirements of Section 3(a)(4) of this Article are satisfied.

#### **5. Censure Motions; Super-Majority Vote**

A motion to censure a member of the Board shall be treated by the chair as a motion to refer the matter to an ad hoc committee for an investigation and report back to the Board. Adoption of the motion to refer and any subsequent motion to censure or otherwise discipline a member of the Board requires an affirmative vote of two-thirds of the members present at the meeting, or if less than two-thirds of the members of the Board are present, unanimous vote of those present. The member charged with misconduct shall not be entitled to vote on such motions and shall not be counted for purposes of calculating the two-thirds or unanimous vote requirement.

#### **6. Agenda Items**

Members of the Board of Retirement or administrative staff to the Board requesting to place items on the agenda of the Board must do so by contacting the staff secretary to the Board in writing no later than noon of the fifth working day prior to any regularly scheduled or special meeting of the Board and specify the nature of the item to be placed on the agenda. Notwithstanding the foregoing, the Chief Executive Officer may with the chair's approval accept items for the agenda if he or she can do so without violating the agenda and notice requirements of the Ralph M. Brown Act.

#### **7. Communications and Requests**

- (a) Agendas shall be posted and made available to the public in accordance with the Ralph M. Brown Act (Government Code Sections 54950 et seq.). Public documents referred to in the agenda are available for review at the office of the staff secretary to the Board.
- (b) Persons desiring to address the Board shall make their intention known by filling out a "Request to Address the Board" form, which may be obtained from the staff secretary to the Board.
- (c) No person shall address the Board until he or she has first been recognized by the chair. Each person, except for staff, addressing the Board shall state his or her name and purpose for addressing the Board. The chair may, in the interest of facilitating the business of the Board, limit the amount of time an individual may use in addressing the Board.

- (d) Notwithstanding any other provision of these Bylaws, members of the public shall have the right to address the Board on items which are within the subject matter jurisdiction of the Board. Not more than six persons, excluding staff and scheduled presentations, may address the Board on any one agenda or non-agenda item at any meeting, unless a motion to permit additional persons to address the Board is duly adopted by majority vote of the Board. Except as otherwise permitted by the Ralph M. Brown Act (Government Code Sections 54950 et seq.), no deliberation or action may be taken by the Board concerning a non-agenda item, except that members of the Board may (1) briefly respond to statements made or questions posed by persons addressing the Board, (2) ask a question for clarification, or (3) provide a reference to staff for factual information. Further, the Board may take action to direct staff to place a matter of business on a future agenda.

## **8. Committees**

- (a) The chair shall appoint committees as deemed necessary to carry out the business of the Board. The Ralph M. Brown Act is not applicable to advisory committees composed solely of members of the Board of Retirement which are less than a quorum of the Board, except that standing committees of the Board, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action of the Board, shall be governed by the Brown Act.
- (b) Members of the Board or administrative staff may place items of business for discussion on the agenda by contacting the secretary of the committee in writing no later than noon of the fifth working day prior to any regularly scheduled committee meeting.
- (c) The committee chair may cancel a scheduled committee meeting when it is determined there are no items of business for the agenda, or a quorum of the committee will not be present. In the event a member of the committee is absent from a committee meeting, the chair shall designate the alternate member of the committee to sit as a voting member of the committee for the duration of the meeting or until such time as the designated member is present.

## **9. Removal From Boardroom**

- (a) The chair shall order removed from the Board Room any person who commits one or more of the following acts:
- (1) Disorderly, contemptuous, or insolent behavior toward the Board, staff, or any member thereof, tending to interrupt the due and orderly course of the meeting.
  - (2) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due and orderly course of the meeting.
  - (3) Any other unlawful interference with the due and orderly course of the meeting.
- (b) Removal of a person from the Board Room shall be executed by the Sergeant-at-Arms upon being so directed by the chair. Any person so removed shall be excluded from further attendance at the meeting from which he or she was removed, unless permission to attend is granted upon motion adopted by a majority vote of the Board.

### III. MEMBERSHIP

#### 1. Eligibility

(a) **On or before January 3, 1982:**

Each person entering the employ of the County, Districts, or Courts on a permanent basis on or before January 3, 1982 shall become a member on the first day of the calendar month after his or her entrance into service.

(b) **January 4, 1982 – December 31, 1990:**

Each person entering the employ of the County, Districts, or Courts on a permanent basis on or after January 4, 1982 and prior to January 1, 1991, shall become a member on the first day of the calendar month following his or her election of a retirement plan available to employees on or after January 4, 1982.

(c) **January 4, 1982 – November 30, 2012 – Safety Membership:**

Each person eligible for safety membership entering the employ of the County, Districts, or Courts on a permanent basis on or after January 4, 1982, or first becoming eligible for safety membership after January 4, 1982, shall become a member of Safety Plan B the first day of the calendar month after his or her entrance into service.

This Section (1)(c) shall be inoperative on and after December 1, 2012.

(d) **January 1, 1991 – December 31, 1991 – General Membership:**

Each person eligible for general membership entering the employ of the County, Districts, or Courts on a permanent basis on or after January 1, 1991 and prior to January 1, 1992, or first becoming eligible for general membership on or after January 1, 1991 and before January 1, 1992, shall become a member on the first day of the calendar month following his or her election of a retirement plan available to general members on or after January 4, 1982. The election shall be made by filing a Sworn Statement and Election of Retirement Plan and shall be certified to the Board:

- (1) Within 30 days of employment if written disclosure materials are provided by the employer within 14 days of employment, or
- (2) Within 30 days of the receipt of written disclosure materials provided by the employer if the employer fails to provide written disclosure materials within 14 days of employment.

Any person eligible for general membership who dies prior to certifying his or her election or who fails to certify his or her election within the period set forth above shall, as of the date of death or the day immediately following the last day to certify his or her election, be deemed to have elected to be covered by Plan E.

(e) **January 1, 1992 – November 26, 2012 – General Membership:**

- (1) Each person eligible for general membership entering the employ of the County, Districts, or Courts on a permanent basis on or after January 1, 1992 or first becoming eligible for membership on or after January 1, 1992, and who has not made an election of a retirement plan available to employees on or after January 4, 1982 shall become a member of Plan E the first day of the calendar month after his or her entrance into the service. Any member who dies prior to certifying his or her election shall be deemed to have elected to be covered by Plan E.

- (2) Any person who has been enrolled in Plan E pursuant to paragraph (d)(1) may elect to be covered by the contributory plan available to new employees, provided such election is made:
  - (i) Within 60 days of employment, or eligibility for membership, or
  - (ii) Within 45 days of the receipt of written disclosure materials from the employer, whichever is later.
- (3) The election of a contributory plan pursuant to paragraph 2 shall be made by filing a Sworn Statement and Election of Retirement Plan and shall be certified to the Board. Any person who makes the election shall be deemed to be a member of the contributory plan as of the first day of the calendar month following his or her entrance into the service and the County Auditor-Controller shall make appropriate deductions from the member's future salary warrants to cover the member's contributions applicable to the period that the member was deemed to be included in the plan.
- (4) This section 1(e) shall be inoperative on and after November 27, 2012.
- (f) **November 27, 2012 – November 30, 2012:**
  - (1) Each person entering the employ of the county, Districts, or Courts on a permanent basis during the period November 27-30, 2012 shall become a member of a contributory plan the first day of the calendar month after his or her entrance into the service.
  - (2) This section shall become inoperative on and after November 30, 2012.
- (g) **December 1, 2012:**

Each person entering the employ of the county, Districts, or Courts on a permanent basis on or after December 1, 2012 shall become a member of a contributory plan in accordance with the provisions of the California Public Employees' Pension Reform Act of 2013, Government Code Section 7522 et seq.
- (h) Excluded employees are: Temporary, Seasonal, Intermittent, and Part-Time employees, except as otherwise provided in Sections 2, 3(b) and 4(b), of this Article. For the purpose of these Bylaws:
  - (1) TEMPORARY EMPLOYEES shall be construed as being:
    - (i) Those appointed from Civil Service lists for temporary service only.
    - (ii) Any employee whose position is exempt from Civil Service provisions, until reported to the Civil Service Commission or to the County Auditor-Controller as a permanent employee by the Head of the Department, or appointing body, or Commission.
    - (iii) Any employee who is paid on a per diem or hourly basis and whose position is under an item not designated "as needed," until reported to the Civil Service Commission or the County Auditor-Controller as a permanent employee by the Head of the Department, or appointing body, or Commission.
  - (2) SEASONAL SERVICE shall mean service for the County or District at certain specified periods in each calendar year or every second calendar year.

- (3) INTERMITTENT SERVICE shall mean service for the County or District which is periodic in nature.
- (4) PART-TIME SERVICE shall mean service for the County or District which requires for the performance of duties less than 75 percent of the full standard of hours required in County or District service.

## **2. Optional Membership**

- (a) Any Temporary, Seasonal, Intermittent, or Part-Time employee who works 180 days or more or the equivalent thereof in a calendar year, including vacation or sick leave for which he or she receives compensation, and excluding Saturdays, Sundays, and holidays whether paid for or not, may elect to become a member of the Los Angeles County Employees Retirement Association by filing a written notice of his or her election with the Board of Retirement on or before March 31 of the next succeeding calendar year and will thereafter be known as an optional member.
- (b) Irrespective of his or her duties, such an employee may not elect to become and he or she shall not become a safety member. Such an employee shall become a general member on the first day of the calendar month next succeeding the month during which he or she files his or her election and shall remain a member thereafter, providing the period between his or her employments does not exceed one calendar year.
- (c) This section shall be inoperative on and after December 31, 1978.
- (d) Notwithstanding any other provision in these Bylaws, all employees of the County of Los Angeles who are classified as Beach Lifeguard I, Recurrent and who have worked 180 or more days in calendar year 1978 shall be entitled to optional membership provided that they elect such optional membership by September 30, 1979.

## **3. Withdrawal From Active Membership**

- (a) Contributory Member
  - (1) Any contributory member of the Retirement Association who, by resignation or transfer, changes from a position in which membership in the Retirement Association is compulsory to a position in which membership in the Retirement Association is not compulsory, may file within 60 days from such resignation or transfer a written election with the Board to discontinue his or her active membership. Such written election shall include an application to:
    - (i) Discontinue making retirement contributions, and
    - (ii) If eligible to do so, take deferred retirement.

Member contributions cannot be withdrawn and must remain on deposit whether or not the member is eligible for deferred retirement until the member retires or until County or District service is terminated.

- (2) If within such 60-day period the member does not file an election specified in subdivision (a)(1), the member shall continue as an active contributing member of the Retirement Association, except that if he or she was a safety member he or she shall become a general member. Such membership shall continue until the member's County or District service is terminated, and the member will earn retirement service credit on a pro rata basis proportionate to the time required to perform the same duties in a full-time position, provided that the member is in active service and makes the required retirement contributions.

(b) Non-Contributory Member

- (1) A Plan E member of the Retirement Association who, by resignation or transfer, changes from a position in which membership in the Retirement Association is compulsory to a position in which membership in the Retirement Association is not compulsory, may file within 60 days from such resignation or transfer a written election with the Board to discontinue his or her active membership.
- (2) If within such 60-day period the member does not file an election specified in subdivision (b)(1), the member shall continue as an active member of the Retirement Association. Such membership shall continue until the member's County or District service is terminated, and the member will earn retirement service credit on a pro rata basis proportionate to the time required to perform the same duties in a full-time position, provided that the member is in active service.

#### 4. Return to Membership

- (a) Any member of the Retirement Association who has elected to take deferred retirement and who by reinstatement, rehire, or transfer, is appointed to a position in which membership in the Retirement Association is compulsory, shall immediately return to active membership in the Retirement Association with a contribution rate based on the member's retirement plan in effect at the time of the member's most recent election to take a deferred retirement.
- (b) Any member of the Retirement Association who has elected to take deferred retirement and who by reinstatement, rehire, or transfer, is appointed to a position in which membership in the Retirement Association is not compulsory may file, at any time, a written election to terminate such deferred retirement and return to active membership with a contribution rate based on the member's retirement plan in effect at the time of the member's most recent election to take a deferred retirement. Such written election shall specify whether the member also elects to receive credit for any County service not previously credited up to the date of the election. Contributions for such creditable service may be made at any time prior to the effective date of retirement and shall be calculated upon actual earnings, not including overtime, plus the interest which would have been credited to the member's account had contributions been made on the earnings.

## IV. CONTRIBUTIONS

### 1. Basis for Contributions

- (a) **Normal Rate of Contributions - Members of General Plans A Through D, or Safety Plans A and B:**  
The normal rates of contributions of members of General Plans A through D or Safety Plans A and B who occupy permanent positions or are employed on a per diem or hourly basis shall be based upon age at time of entrance into the Retirement Association, and contributions shall be calculated upon the basis of earnings per pay period.
- (b) **Normal Rate of Contributions - Members of General Plan G or Safety Plan C:**  
The normal rate of contributions of members of General Plan G or Safety Plan C who occupy permanent positions, or are employed on a per diem or hourly basis shall

be based upon the single rate in effect at the time of entrance into the Retirement Association, and contributions shall be calculated upon the basis of earnings per pay period.

(c) **Normal Rate of Contributions for Optional Members:**

The normal rates of contributions of optional members who first entered the Retirement Association in General Plans A through D shall be based upon age at time of entrance into the Retirement Association, and monthly contributions shall be calculated upon actual earnings not including overtime, and their accounts shall be analyzed at time of retirement, and any contributions missing then shall be collected or any excess contributions accumulating during service then shall be refunded. Optional membership is not available to safety members and members of General Plan G.

**2. Acceptance of Plan-to-Plan Transfers and Rollovers**

- (a) To the extent authorized by both federal and state law, LACERA shall accept plan-to-plan fund transfers and accept rollover funds from qualified plans.
- (b) If a member becomes entitled to receive a distribution that constitutes an eligible rollover distribution under both federal and state law, the member may elect to have the distribution or a portion thereof paid directly to LACERA.

**3. Redeposit of Contributions Withdrawn**

An active or deferred member may redeposit, in the retirement fund, at any time prior to retirement, an amount equal to all of the accumulated normal contributions he or she has withdrawn, plus regular interest thereon from the date of separation from the Retirement Association. Such redeposit may be made by lump-sum payment or by payroll deductions over a period of not to exceed 120 months; but in no event shall the payroll deduction for this purpose be less than \$50.00 per month, and payment shall be completed within 120 days after the effective retirement date. When payment is complete, the member shall receive credit for the same number of months of service as was represented by the withdrawal.

**4. Calculation of Contributions and Benefits**

Compensation Earnable or Pensionable Compensation, upon which appropriate member contribution rates are applied or retirement benefits are computed, shall include any portion of a member's Social Security contribution or retirement contribution that has been paid by the County or District, and any amount deducted pursuant to a salary reduction agreement.

## V. PRIOR SERVICE

**1. Definition of Prior Service**

- (a) Pursuant to Sections 31641(a), 31643 and 31644 of the Government Code, "prior service" means employment of a person by a County, District, Municipal Court, or Superior Court prior to January 1, 1938, whether such employment is interrupted or not. Credit for prior service shall be calculated as defined in Article VI of these Bylaws.
- (b) Prior service shall also include service performed for any public agency located wholly in the County of Los Angeles prior to a member's first entry into membership for which the member is not eligible now or in the future to receive a pension or retirement

allowance from such public agency. Any member who elects to receive credit as prior service for such service shall contribute to the retirement system an amount equal to what the contributions would have been had the member been employed by the County of Los Angeles receiving the compensation paid a carpenter during the period of time for which such service was performed times the rate of contribution assigned the member upon his or her initial entrance into membership. This paragraph shall be inoperative with respect to any member who enters the retirement system on or after January 1, 1976.

- (c) Prior service shall also include service performed for the United States of America, the State of California, or any department or agency of either, or any public entity located within the State of California. Such service must have been performed prior to a member's first entry into membership, and the member must not be eligible now or in the future to receive a pension or retirement allowance for such service in any other retirement system.
- (d) Any member,
  - (i) in Plan A, B, C, D, or G and,
  - (ii) who is not otherwise eligible to receive credit for public service under the resolutions adopted by the Board of Supervisors on January 2, 1968 and November 21, 1972 and,
  - (iii) who is not otherwise eligible to receive credit for prior service in accordance with subsections (a) or (b); and
  - (iv) who elects to receive credit for prior service as defined in subsection (c) shall enter into an agreement with the Retirement Association. Such agreement shall provide that in order to receive credit for the prior service in question, the member shall contribute to the retirement system an amount which is equal to the present value of the additional liability incurred by the system in crediting the prior service, based upon the actuarial assumptions in effect for the retirement system at the time the agreement is entered into or amended. The agreement shall provide that the additional retirement contributions required to fund the prior service credit shall be paid by the member and may, at the member's option, be a specific dollar payment or a percent of salary obligation. If the member elects to make the required additional retirement contributions by a specific dollar payment, the member may do so by agreeing either to make a lump-sum payment or to make installment payments (which shall include interest at the assumed rate) through payroll deduction over a period not to exceed 120 months, but in no event shall the payroll deduction for this purpose be less than \$50.00 per month. If the member elects to enter into a percent of salary obligation, the member shall agree to make additional retirement contributions as a percent of salary through payroll deductions over a period extending from the effective date of the agreement to the date of retirement. As a condition of receiving credit for such prior service, the member shall complete all contributions required hereunder within 120 days after the effective date of retirement.
- (e) In no event may a member receive credit for a total period of prior service which exceeds the length of the member's actual County service at the conclusion of the agreement. Where the County Employees Retirement Law of 1937 (Government Code Sections 31450, et seq.) or the Public Employees' Pension Reform Act of 2013 (Government Code Sections 7522, et seq.) prescribes minimum service requirements with regard to

retirement for service or disability, deferred retirement, or the death benefit, the member shall render actual County service sufficient to meet such minimum requirements and may not receive credit for prior service, except as defined in subsection (a), toward meeting such minimum requirements.

- (f) For a specific dollar payment obligation as specified under subsection V.1.d(iv), the Board of Retirement shall designate a uniform age determined by the actuary to minimize the adverse impact of previous service purchase contracts on LACERA's Unfunded Actuarial Accrued Liability, and all actuarial assumptions, calculations of contributions, and the period over which payment shall be made shall be based upon that age. In the event that the member elects to retire before remitting all contributions under the agreement, the member may, at his or her election, either receive credit for that portion of the prior service which has been purchased by the contributions already made and forego credit for the remainder of the prior service or make an additional lump-sum payment sufficient to complete the total payment necessary to receive credit for the entire period of prior service covered by the agreement.
- (g) For a percent of salary obligation specified under subsection V.1.d(iv), the agreement between the member and the Retirement Association shall specify the age at which the member intends to retire; and all actuarial assumptions, calculations of contributions, and the period over which payment shall be made shall be based upon that age. In the event that the member elects to retire at an earlier age than the age specified in the agreement, the member may, at his or her election, either receive credit for that portion of the prior service which has been purchased by the contributions already made and forego credit for the remainder of the prior service or make an additional lump-sum payment sufficient to complete the total payment necessary to receive credit for the entire period of prior service covered by the agreement. In the event the member elects to retire at a later age than the age specified in the agreement, contributions shall cease at the age specified in the agreement and no further adjustments shall be made in service credit or the cost of such credit.

## **2. Credit for Prior Service**

Credit for prior service shall not include that period of time between the date of employment which establishes eligibility for membership and the date of membership. This paragraph does not constitute a change in, but is declaratory of the existing intent and administration of this Article by the Board of Retirement.

## **VI. CALCULATION OF CREDIT**

The purchase of public service and/or prior service time shall be permitted. Full-time for hourly and per diem members means 21 working days per credited month of credit and, for monthly members, 30 days per credited month of credit; but not more than 12 months of credit shall be allowed for all service in any one period of 12 consecutive months. Members shall be deemed to have rendered service sufficient to receive credit for a full month when the total period of time allowed for purchase, divided into months, results in a remaining fractional month of 11 or more work days for hourly and per diem members and 16 or more days for monthly members.

## VII. APPLICATION FOR DISABILITY RETIREMENT

### 1. Application Form

An application for service-connected or nonservice-connected disability retirement shall be filed on the Application for Disability Retirement form prescribed by the Board.

### 2. Effective Date of Disability Retirement Allowance

- (a) The effective date of a disability retirement allowance shall be established pursuant to Government Code Section 31724.
- (b) The applicant may apply to have the disability retirement allowance become effective earlier than the date the application is filed upon a showing the application was delayed due to administrative oversight or by the inability to determine the permanency of the disability until after the date following the last day for which the applicant received regular compensation, by completing the applicable section of the Application for Disability Retirement form. The failure of the applicant to apply for an earlier effective date at the time the application is filed shall constitute a waiver of the right to apply for an earlier effective date.
- (c) Notwithstanding subsection (b) of this Section 2, the application may be amended, without cause, to seek an earlier effective date, provided the amended application is filed prior to the date the applicant is referred to a Board-appointed physician for a medical examination. Thereafter, an amended application shall not be permitted unless so ordered by the Board upon a showing of good cause.

### 3. Denial Without Prejudice

Upon review of the Application for Disability Retirement, the Board may initially determine that the application is denied without prejudice. A denial without prejudice permits the Board to reconsider a case upon the submittal of additional information to support the application. An applicant whose application is denied without prejudice may:

- (a) Amend the current application by submitting additional information to support the application within six (6) months after notice of the Board's action, or thereafter
- (b) File a new application within the time prescribed by Government Code Section 31722, which provides:

"The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service or while from the date of discontinuance of service to the time of the application he or she is continuously physically or mentally incapacitated to perform his or her duties." In the event of a new application, the Board shall not be bound by its earlier decision. In the event the applicant has appealed the Board's initial denial, such appeal shall be automatically stayed pending reconsideration of the amended or new application.

## **VIII. REQUEST FOR HEARING**

Whenever the Board denies an application for service-connected or nonservice-connected disability retirement without a hearing, or whenever the Board denies an application for a service-connected survivor's allowance, the applicant shall, upon request, be entitled to a hearing before the Board or before a referee appointed by the Board pursuant to Government Code Section 31533. Any such request for hearing shall be in writing and shall be made within 30 days after notice of the Board's action denying the application is mailed by certified or registered mail to the applicant. An application is deemed made on the date mailed if mailed by certified or registered mail, on the date postmarked if mailed by first class mail and received, or on the date received by the Retirement Association, whichever is earlier.

## **IX. JUDICIAL REVIEW**

In any matter in which the party or applicant is entitled to judicial review of any action taken by the Board of Retirement, the petition to the court must be filed within 90 days from the date the notice of the Board's decision is delivered to the party or applicant or served by certified or registered mail upon the party or applicant or the party's or applicant's attorney.

## **X. ELECTRONIC SIGNATURES**

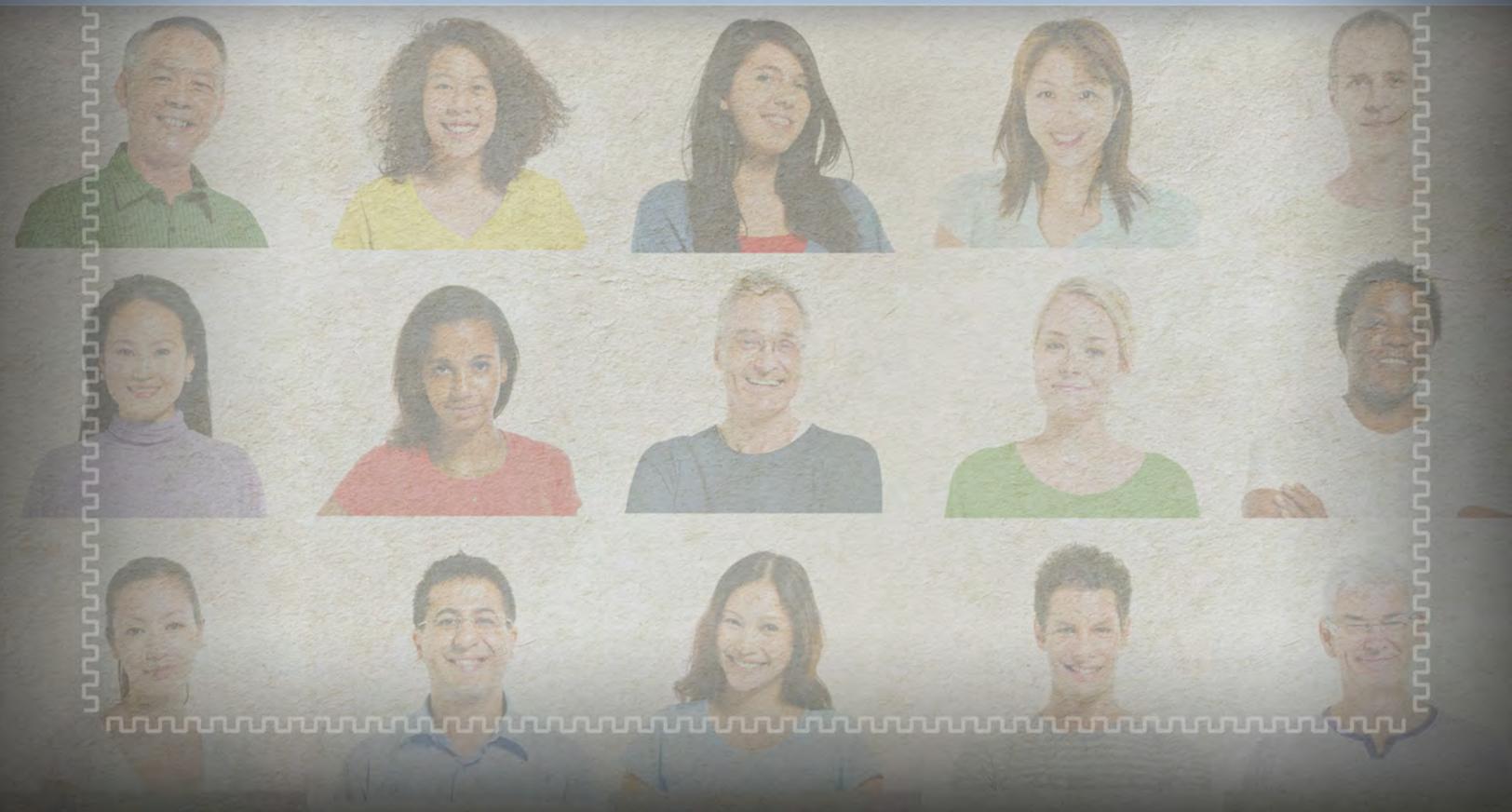
The Board of Retirement may use and accept a document requiring a signature that is submitted by a member using an electronic signature, if the document and electronic signature are submitted using technology the Board deems sufficient, as set forth in regulations adopted by the Board, to ensure its integrity, security, and authenticity. A document submitted pursuant to the Board-adopted regulations shall be given the same force as a signed, valid original document.

## **XI. AMENDMENTS**

The Regulations of the Board of Retirement may be amended at any duly convened meeting by an affirmative vote of six members of the Board.



**REGULATIONS FOR  
IRC CODE § 401(a)(9)  
REQUIRED MINIMUM DISTRIBUTION RULES**



## **XII. REGULATIONS FOR IRC CODE SECTION 401(a)(9)**

### **MINIMUM REQUIRED DISTRIBUTIONS**

#### **SECTION I. GENERAL RULES**

##### **A. Purpose and Effective Date**

In accordance with sections 31485.14, 31525 and 31706 of the California Government Code, the regulations set forth herein are effective as of May 5, 2015 and reaffirm and clarify the existing practices of the County Employees Retirement Association (the "Association") with respect to the minimum distribution requirements under section 401(a)(9) of the Internal Revenue Code (the "Code").

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

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

##### **B. Reasonable Good Faith Interpretation of Code**

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

##### **C. Elections Under TEFRA § 242(b)(2)**

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

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

## **SECTION II. TIME AND MANNER OF DISTRIBUTION**

##### **A. Required Beginning Date**

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

## **B. Forms of Distribution**

### 1. Periodic And Other Forms Of Payments

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

### 2. General Rules Regarding RMD Annuities

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

#### a. Periodic

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

#### b. Distribution Period

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

#### c. Increases

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

#### d. Change in Period Paid

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

#### e. Commencement

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

### 3. Other Forms

#### a. Annuity Contract

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

b. Individual Account

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

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

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

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

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

**A. Single Life RMD Annuity**

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

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

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

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

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

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

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

The survivor annuity percentage of an RMD Annuity that begins no later than the Required Beginning Date and is paid for the Member's lifetime and the lifetime of a beneficiary other than the Member's surviving Spouse should not exceed the applicable percentage of the RMD Annuity payment during the Member's lifetime, using the table set forth in Treasury regulation section 1.401(a)(9)-6, Q&A2(c)(2), as determined in the manner described in Q&A2(c)(1), but only to the extent required to be consistent with a good faith interpretation of the Code. This Treasury Regulation requires that the RMD Annuity payable to the Member's beneficiary after the Member's death not exceed the percentage of the RMD Annuity payable to the Member during the Member's life specified in the table if the adjusted age difference between the Member and the beneficiary is more than 10 years.

#### **2. Rule Regarding Children of Member**

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

#### **3. Rule Regarding Other Beneficiaries**

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

## **E. Period Certain RMD Annuity**

### 1. Spouse Is the Sole Beneficiary

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

### 2. Spouse Is Not the Sole Beneficiary

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

### 3. Rule Regarding Children of Member

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

### 4. Rule Regarding Other Beneficiaries

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

## SECTION IV. DISTRIBUTIONS WHEN MEMBER DIES BEFORE BENEFITS BEGIN

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

### A. When Distributions Must Begin

1. Spouse Is the Sole Designated Beneficiary

If the Member's sole Designated Beneficiary is the Member's surviving Spouse, then, except as provided in paragraph 5 of this subsection A, distributions to the surviving Spouse must begin by December 31 of the calendar year immediately following the calendar year in which the Member died or, if later, by December 31 of the calendar year in which the Member would have reached age 70½.

2. Spouse Is not the Sole Designated Beneficiary

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

3. No Designated Beneficiary

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

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

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

5. Election of Five Year Rule

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

## **B. When Distributions Are Considered to Begin**

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

## **C. Length of Distribution Period**

### 1. Member Is Survived by a Designated Beneficiary

#### a. General Rule

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

#### b. Period Certain

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

### 2. No Designated Beneficiary

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

### 3. Death of Surviving Spouse Before Distributions To Spouse Begin

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

## SECTION V. SPECIAL RULES

### A. RMD Annuity Payment Increases

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

1. Cost-of-Living Adjustments

a. Annual COLA Increases

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

b. Cumulative COLA Increases

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

c. Additional COLA Increases

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

2. “Pop-Ups”

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

3. Single Sum Distribution

RMD Annuity Payments may increase to the extent necessary to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Member’s death or under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A14(a)(5) and taking into account the vested rights in retirement benefits

created by the California Constitution, to allow a beneficiary to select a lump sum distribution of all or part of the Member's interest under the Association as provided in the CERL.

4. Plan Amendment

Benefits may increase if they result from an amendment to, or interpretation of, the CERL, the California Government Code or any other applicable law governing benefits for Members or from an ordinance, resolution or regulation pursuant to such law.

5. Other Benefits

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

**B. Additional Accruals After First Distribution Calendar Year**

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

**C. Domestic Relations Orders**

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

**D. Reciprocal Member**

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

### **E. Public Safety Member Killed in Line of Duty**

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

### **F. Rollovers**

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

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

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

## **SECTION VI. DEFINITIONS**

### **A. Annuity Starting Date**

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

### **B. Designated Beneficiary**

"Designated Beneficiary" means the individual who is designated by the Member (or the Member's surviving Spouse) as the beneficiary of the Member's interest under the Association and who is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the Treasury regulations. Accordingly, entities

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

### **C. Distribution Calendar Year**

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

### **D. Required Beginning Date**

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

### **E. RMD Annuity**

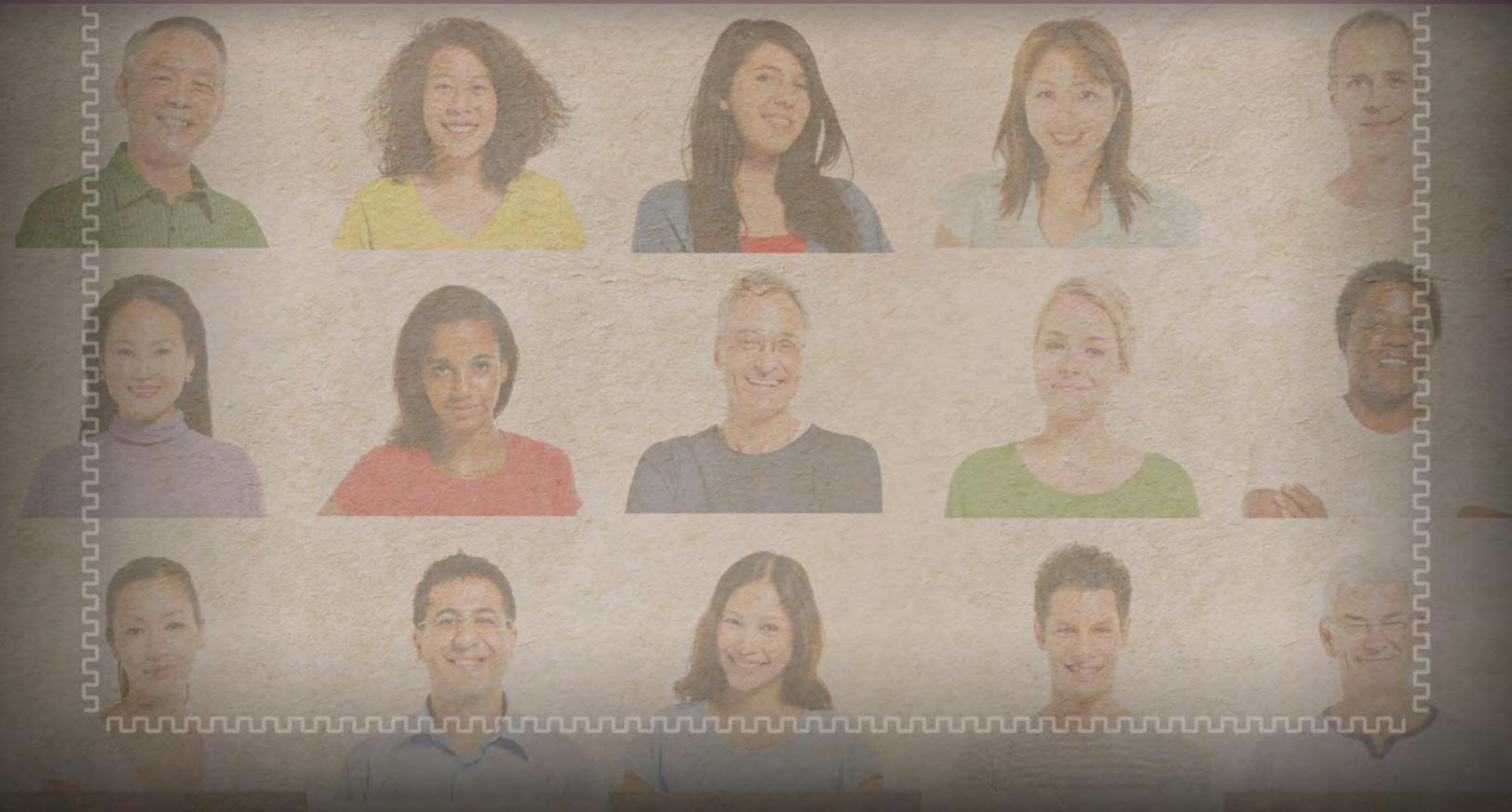
"RMD Annuity" means, for purposes of the required minimum distribution rules in section 401(a)(9) of the Code, a distribution form providing for periodic payments for a specified period of time.

### **F. Spouse**

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



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



### **XIII. REGULATIONS FOR IRC CODE SECTION 401(a)(17) COMPENSATION LIMIT SECTION I. PURPOSE AND SCOPE**

In accordance with section 31525 and section 31671 of the California Government Code, the regulations set forth herein are effective as of May 5, 2015, and reaffirm and clarify the existing practices of the County Employees Retirement Association (the "Association") with respect to the limit on annual compensation under section 401(a)(17) of the Internal Revenue Code (the "Code"). For these regulations, the Code includes Treasury regulations issued under section 401(a)(17).

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

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

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

### **SECTION II. LIMITATION ON ANNUAL COMPENSATION EARNABLE**

#### **A. In General**

##### **1. Annual Compensation Earnable Limit**

The annual amount of compensation that is taken into account in determining all benefits provided by the Association to affected Members for any year, which is referred to in the CERL and in these Regulations as "Compensation Earnable", shall in no event be greater than the amount allowed by Code section 401(a)(17) adjusted in accordance with the Code for increases in the cost of living. This limit is called the Annual Compensation Earnable Limit in these regulations. (Certain Members may also be subject to the limitation on Pensionable Compensation under the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), which would produce a lower limit than the limit under section 401(a)(17) of the Code.)

##### **2. Members Affected by the Annual Limit**

###### **a. Not Applicable to Pre-July 1, 1996 for System Members**

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

- b. Applies to New Members of the Association On and After July 1, 1996  
In accordance with Government Code section 31671, the Annual Compensation Earnable Limit shall apply to all individuals who first become Members of the Association on or after July 1, 1996.
- c. Date First Becomes a Member  
An individual first becomes a Member on the date that a Member first became a Member in the Association, regardless of whether the Member terminated and resumed participation in the Association at a later date.

## **B. Operational Rules, In General**

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

### 1. Limited Compensation Earnable

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

### 2. Benefits Affected by the Limit

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

### 3. Compensation Earnable From More Than One Employer

If Compensation Earnable from more than one employer that participates in the Association is taken into account in determining a Member’s benefits, the Annual Compensation Earnable Limit shall apply separately to the Compensation Earnable from each employer. For example, if the Compensation Earnable Limit is \$265,000 for the year and the Member has Compensation Earnable of \$200,000 from one participating employer and \$100,000 from another participating employer, the unreduced total Compensation Earnable from each employer may be taken into account. The Annual Compensation Earnable Limit does not apply to the aggregate of Compensation Earnable earned from all employers that participate in the Association.

### 4. Proration for Short Plan Year

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

5. Reciprocity and New Membership in the Association

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

6. Reciprocity and Prior Membership in the Association

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

7. Relationship Between Section 415 Limit and Compensation Earnable Limit

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

8. Clarification Concerning Member Contributions

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

9. General Plan Year Rule for Determining the Limit

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

## SECTION III. PLAN YEAR AND COST-OF-LIVING ADJUSTMENTS

### A. Annual Adjustment for Cost-of-Living Increases

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

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

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

### C. Plan Year Compensation Earnable

#### 1. General Rule

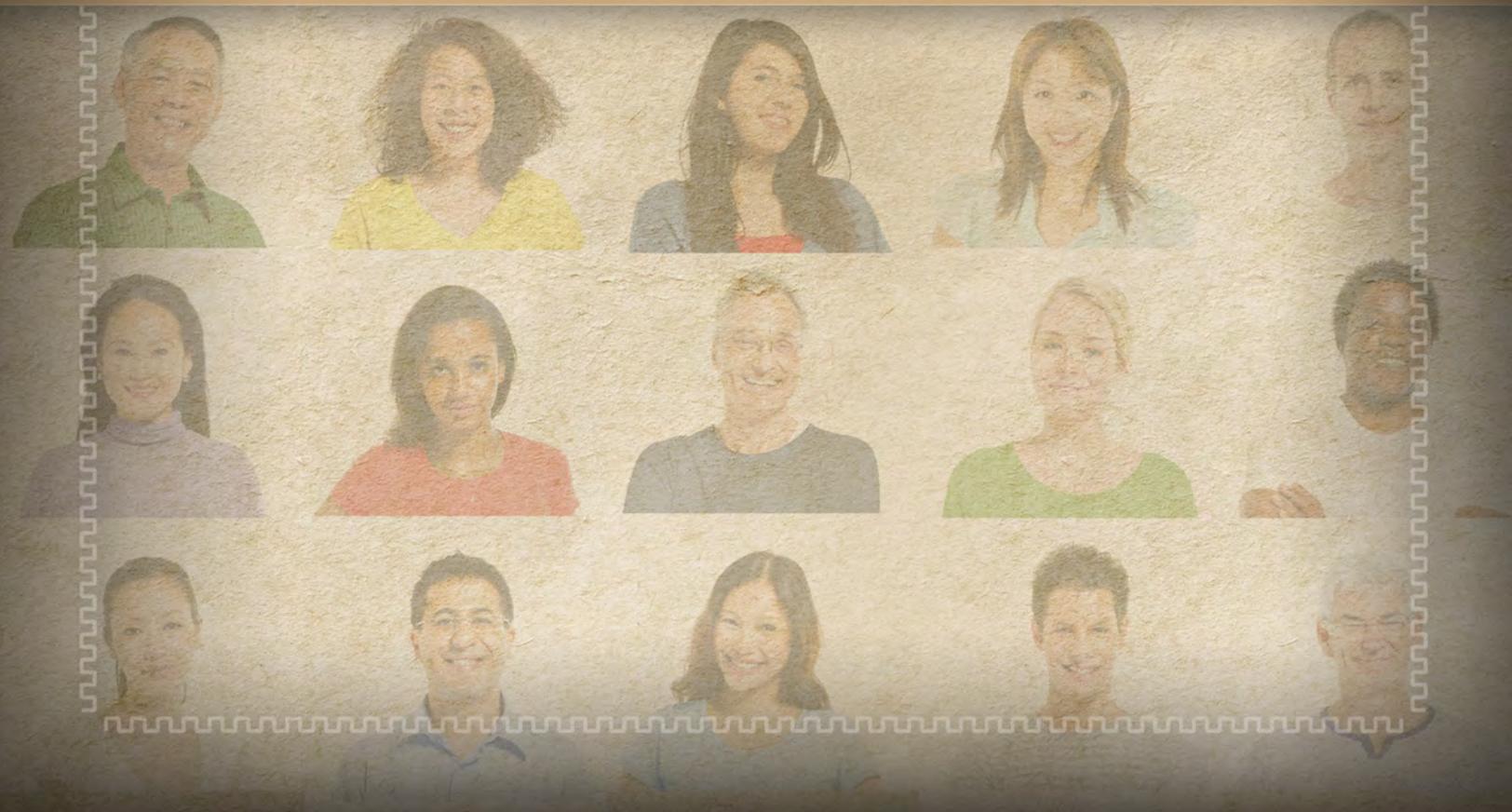
To the extent that the Association determines Compensation Earnable for benefit accruals for a plan year based on Compensation Earnable for the plan year, then the Annual Compensation Earnable Limit that applies for that plan year is the limit in effect for the calendar year in which the plan year begins.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

#### 2. Member Contributions

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



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



**XIV. REGULATIONS FOR IRC CODE SECTION 402(c)  
ROLLOVERS  
SECTION I. PURPOSE AND SCOPE**

In accordance with section 31485.15 and section 31525 of the California Government Code, the regulations set forth herein are effective as of May 5, 2015, and reaffirm and clarify the existing practices of the County Employees Retirement Association (the "Association") with respect to rollovers into and out of the Association in accordance with the Internal Revenue Code (the "Code"). For these regulations, Code includes the Treasury regulations issued under the Code.

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

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

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

**SECTION II. ROLLOVER DISTRIBUTIONS FROM THE ASSOCIATION**

**A. Rollovers**

1. Direct Rollover

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

2. Indirect Rollover

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

**B. Eligible Individuals**

1. Eligible Individual

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

a. Terminated From Employment

A Member who has terminated employment from the

County (or other agency covered by the Association) and who is eligible to withdraw his or her accumulated Member contributions under the Association;

b. Surviving Spouse

A deceased Member's surviving Spouse;

c. Alternate Payee

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

d. Non-Spouse Beneficiary

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

2. Spouse

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

**C. Payments that Can and Cannot Be Rolled Over**

1. Eligible Rollover Distribution Required

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

2. Eligible Rollover Distribution Defined

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

3. After-Tax Portion

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

4. Exclusions From Eligible Rollover Distributions

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

a. Periodic Payments

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

b. Required Distributions

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

**D. Eligible Retirement Plans**

1. Payment to Eligible Retirement Plan

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

2. Eligible Retirement Plan Defined

An “Eligible Retirement Plan” is:

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

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

3. Certain Exclusions

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

## **E. Direct Rollovers**

1. Withholding and Direct Rollovers

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

2. Administrative Requirements, In General

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

3. Rollover Check

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

4. Eligible Individual's Responsibility Re Recipient Plan

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

5. Time of Payment

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

**F. Indirect Rollovers**

1. Choice of Indirect Rollover

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

2. Indirect Rollover Withholding

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

3. Eligible Individual's Responsibility Re Recipient Plan

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

**G. Direct Rollover of a Non-Spousal Distribution**

1. Trustee-To-Trustee Transfer Required

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

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

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

3. Trust as Beneficiary

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

**H. Notice Requirements**

1. 402(f) Notice From the Association

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

2. Time Periods

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

**SECTION III. ROLLOVER CONTRIBUTIONS TO THE ASSOCIATION**

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

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

**A. General Rules**

1. Eligible Member

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

2. Rollovers Allowed

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

3. Separate Accounting

The Association will separately account for all rollover contributions.

4. Certification to the Association by Member

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

5. Elections and Association Discretion

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

6. Correction of Errors

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

**B. Rollovers From Qualified Plans**

1. Acceptance of Rollover

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

2. Required Due Diligence Procedure

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

a. Eligible Member Certification

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

- (i) A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution is from a Code section 401(a) qualified plan, contains no after-tax or designated Roth contributions or earnings, or any amounts representing a required minimum distribution under Code section 401(a)(9); or
- (ii) A signed certification from the transferring plan's administrator that the rollover contribution contains no after-tax or designated Roth contributions or earnings, nor any amounts representing a required minimum distribution under Code section 401(a)(9).

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

b. Association Verification of Payment Source

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

**C. Rollovers From an IRA**

1. Acceptance of Rollover

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

2. Required Due Diligence Procedure

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

a. Eligible Member Certification

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

- (i) A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution is from his or her IRA and contains no after-tax or designated Roth contributions or earnings, nor any amounts representing a required minimum distribution under Code section 401(a); or
- (ii) If the Eligible Member cannot certify, with respect to the after-tax or designated Roth contributions, a signed certification from an accountant or tax advisor or the IRA trustee/custodian providing the amount of pre-tax contributions and after-tax or designated Roth contributions in the IRA.

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

b. Association Verification of Payment Source

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

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

1. Acceptance of Rollover

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

2. Required Due Diligence Procedure

The Association must take reasonable steps to confirm the sending plan’s status as an eligible 457(b) plan or an eligible Code section 403(b) annuity or custodial account and that the rollover contribution is valid. The Association may rely on IRS guidance such as that provided in Revenue Ruling 2014-9 and any successor guidance with respect to simplified due diligence processes that may be allowed by the Internal Revenue Service.

a. Eligible Member Certification

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

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

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

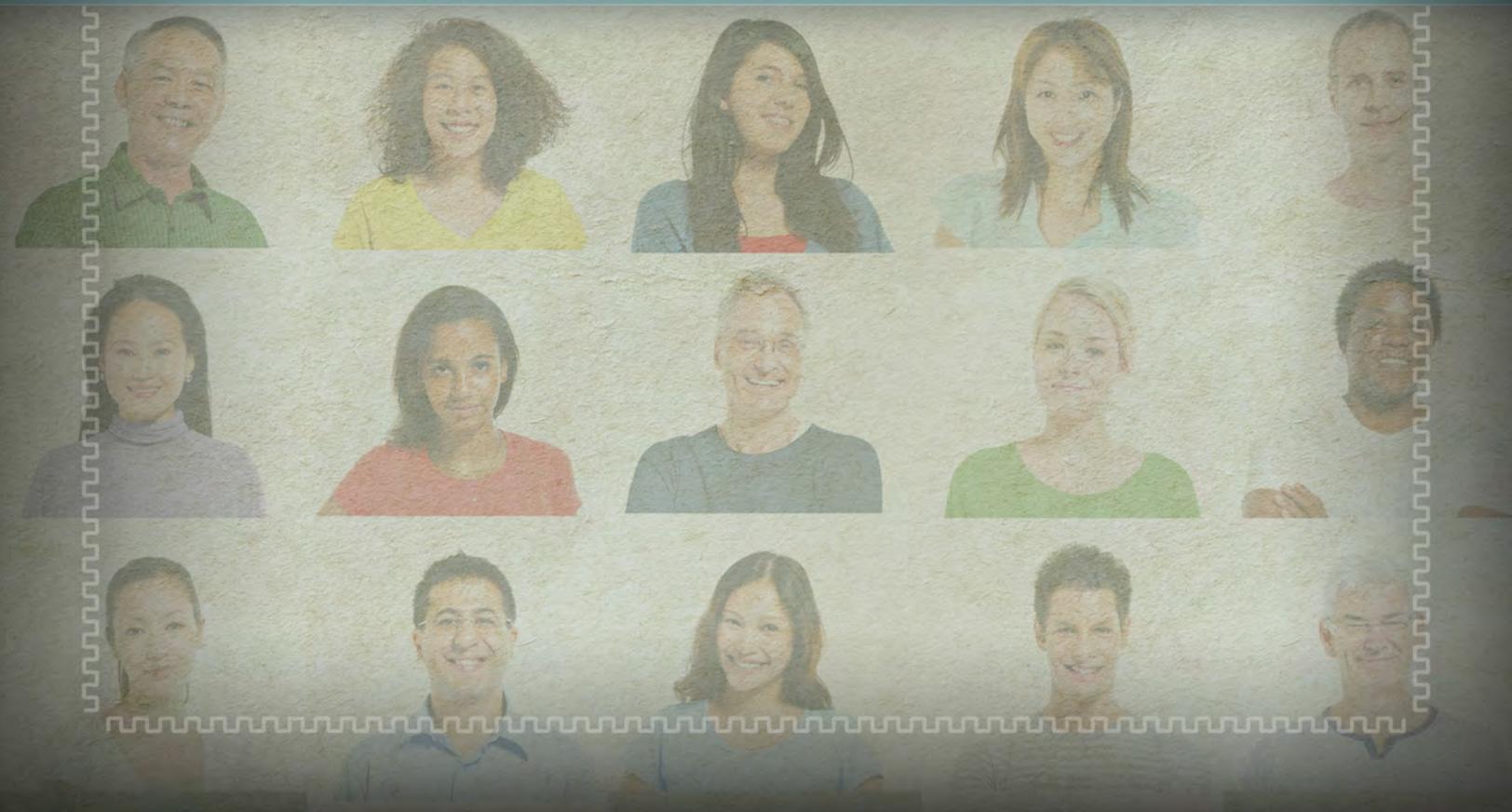
b. Association Verification of Payment Source

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



**CODE § 401(a)(36)**

**NORMAL RETIREMENT AGE  
AND BONA FIDE SEPARATION**



## **XV. REGULATIONS FOR IRC CODE SECTION 401(a) NORMAL RETIREMENT AGE AND BONA FIDE SEPARATION SECTION I. PURPOSE AND SCOPE**

In accordance with section 31485.21 of the California Government Code, the regulations set forth herein are effective as of May 5, 2015, and reaffirm and clarify the existing practices of the County Employees Retirement Association (the "Association") with respect to the normal retirement age and bona fide separation rules for those who have not attained normal retirement age applicable for the Association in accordance with the Internal Revenue Code (the "Code"). For these regulations, Code includes the Treasury regulations issued under the Code.

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

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

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

### **SECTION II. NORMAL RETIREMENT AGE**

1. Normal Retirement Age for members of LACERA shall be age 57 for general contributory members; age 65 for general noncontributory members; age 55 for safety members; and not less than age 62 for all others until adjusted for demographic plan experience.
2. The Normal Retirement Age for each class of membership has been determined by the Board of Retirement to be the earliest age that is reasonably representative of the typical retirement age for employees similarly situated.
3. The Board of Retirement may periodically review and change the Normal Retirement Age of its Members based on the criteria described in Section 2 above as deemed necessary by the Board, or to the extent required to comply with section 401(a) of Title 26 of the United States Code or for any other reasons determined by the Board. The normal retirement age determined herein does not create any "vested rights" under California

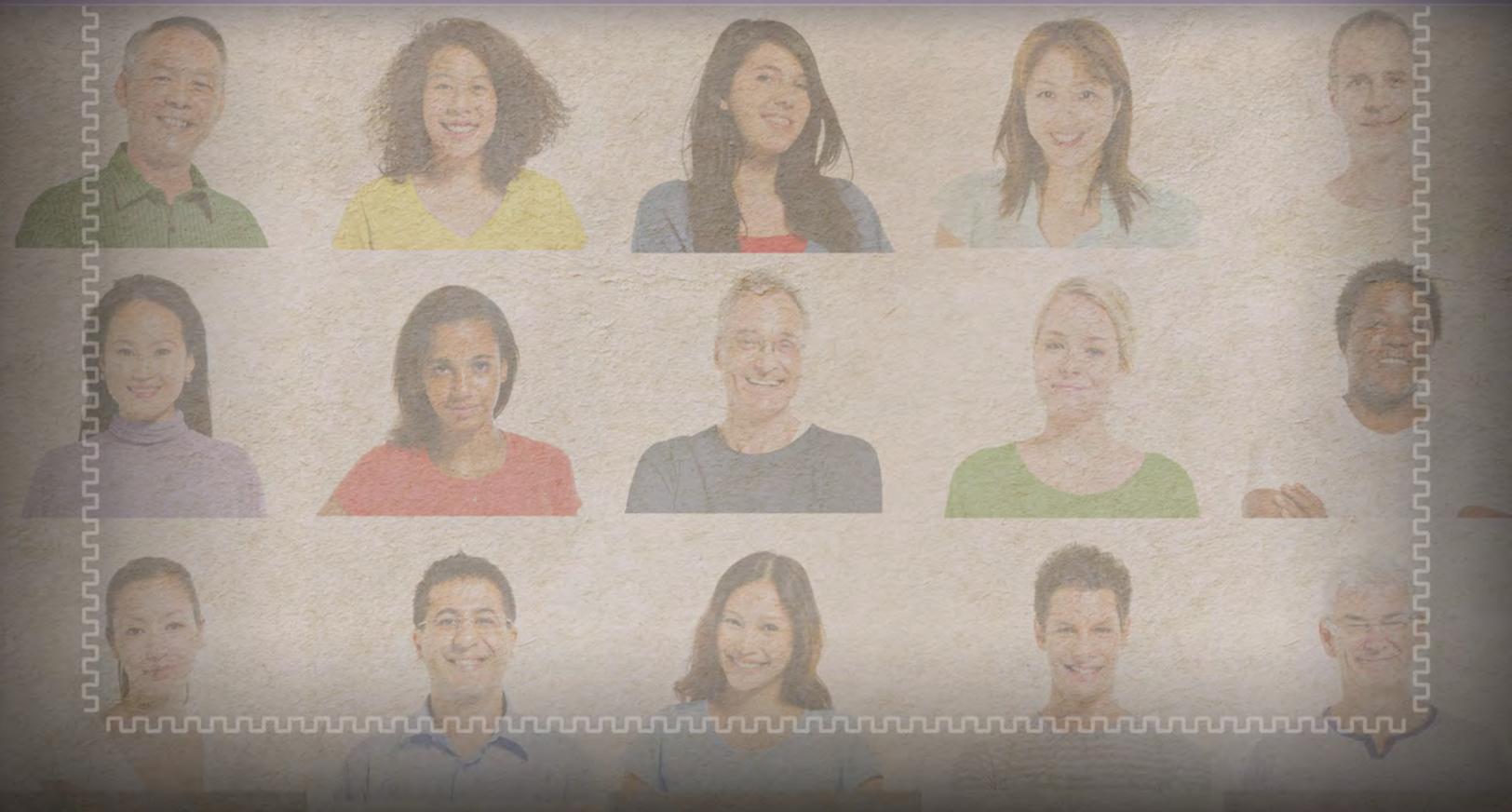
or federal law including but not limited to the contracts clause of the California Constitution.

### **SECTION III. BONA FIDE SEPARATION**

1. A member who retires at an age younger than Normal Retirement Age, as defined herein, may not, prior to the date the member's retirement commences, enter into an agreement, either oral or written, to be reemployed while retired by an employer whose employees participate in LACERA, regardless of the length of the member's break in service after retirement.
2. A member who retires at an age younger than Normal Retirement Age, as defined herein, must have at least a continuous 90-day break in service from the date of the member's retirement prior to being reemployed while retired by an employer whose employees participate in LACERA.



**REGULATIONS FOR  
IRC CODE § 415  
ANNUAL LIMITS**



## **XVI. REGULATIONS FOR IRC SECTION 415(b) LIMITS ON ANNUAL BENEFITS SECTION I. PURPOSE AND SCOPE**

In accordance with section 31525 and section 31899 et. seq. of the California Government Code, the regulations set forth herein are effective as of May 5, 2015, and reaffirm and clarify the existing practices of the County Employees Retirement Association (the "Association") with respect to the limits on benefits under section 415(b) of the Internal Revenue Code (the "Code"). For these regulations, the Code includes Treasury regulations issued under section 415(b). To the extent there is a conflict between these regulations and the Code, the Code governs.

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

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

### **SECTION II. ANNUAL BENEFIT LIMIT**

#### **A. Annual Benefit Limit, In General**

1. Annual Limit

Unless the alternative limit described in subsection E of this Section applies, the Annual Benefit payable to a Member under the Association at any time shall not exceed \$210,000 (for 2015) or such other dollar limit specified under section 415(b)(1)(A) of the Code, automatically adjusted under § 415(d) of the Code, effective January 1 of each year, as provided by the Internal Revenue Service.

2. Maximum Payment

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

3. COLA Adjustment

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

4. Multiple Annuity Starting Dates

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

5. Actuarial Adjustment for Forms of Benefit

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

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

(ii) The annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member computed using a 5.5% interest rate and the Applicable Mortality Table; or

(iii) The annual amount of the Straight Life Annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member computed using the Applicable Interest Rate and the Applicable Mortality Table divided by 1.05.

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

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

- a. Qualified joint and survivor annuity. Survivor benefits payable to a surviving Spouse under a joint and survivor annuity that would qualify as a qualified joint and survivor annuity defined in section 417(b) of the Code. If benefits are paid partly in the form of a qualified joint and survivor annuity and partly in some other form (such as a single sum distribution), the rule of this paragraph applies only to the survivor annuity payments under the portion of the benefit that is paid in the form of a qualified joint and survivor annuity.
- b. Benefits that are not “retirement benefits”. Benefits that are not directly related to retirement benefits (such as pre-retirement qualified disability benefits, preretirement incidental death benefits, and postretirement medical benefits). Additionally, these benefits shall not be subject to the Annual Benefit Limit.
- c. Certain automatic benefit increases. Benefits that meet the following requirements: (i) the Association provides for automatic periodic increases such as a form of benefit that automatically increases the benefit paid according to a specified percentage or objective index (but not a benefit that is increased on an ad hoc basis or a basis that is separately determined by action of the Association’s Board of Retirement or the County’s Board of Supervisors) and (ii) the form of benefit complies with Code section 415(b) without regard to the automatic benefit increase.
- d. In no event shall the amount payable to the Member under the form of benefit in any Limitation Year be greater than the Annual Benefit Limit applicable at the Annuity Starting Date increased by the amounts provided in Code section 415(d). Also if the form of benefit without regard to the automatic benefit increase is not a Straight Life Annuity, then the Annual Benefit at the Annuity Starting Date is determined by converting the form of benefit to an actuarially equivalent Straight Life Annuity, as provided in section II.B.1 of this regulation.

7. Rules for Determining Annual Benefit.

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

**B. Reduction for Less Than 10 Years of Participation**

1. Reduction

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

2. Counting Years of Participation

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

service for an accrual computation period for each 200 hours of service, and the Member is credited with 1,000 hours of service for the period, the Member is credited with ½ year of participation for purposes of this subsection.

3. Disability and Death Benefits

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

**C. Reduction for Commencement Before Age 62 for Certain Members**

1. No Reduction for Certain Safety Members

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

2. Reduction for Benefits Commencing Before Age 62

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

a. The Annual Benefit Limit reduced in accordance with Code section 415(b) to its actuarial equivalent using:

- (i) The Applicable Mortality Table; and
- (ii) A 5% interest rate; or

b. The Annual Benefit Limit multiplied by the ratio of the immediately commencing Straight Life Annuity under the Association at the Member's Annuity Starting Date to the annual amount of the Straight Life Annuity under the Association commencing at age 62, both determined without applying the limitations of this regulation.

3. Probability of Death

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

4. Death and Disability

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

## **D. Increase for Commencement After Age 65**

### 1. Increase For Benefits Commencing After 65

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

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

### 2. Probability of Death

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

## **E. Minimum Benefit Permitted**

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

### 1. Minimum Benefit Limit Allowed

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

2. Condition

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

## **SECTION III. PARTICIPATION IN MULTIPLE DEFINED BENEFIT PLANS**

### **A. Application of Limit to Aggregate Benefits**

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

### **B. Multiple Plan Benefit Limit Coordination**

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

## **SECTION IV. MULTIPLE EMPLOYER PLAN**

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

## **SECTION V. GRANDFATHER RULES**

### **A. Annual Benefit Limit Equals Accrued Benefit**

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

## **B. Qualified Participant**

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

## **C. Election**

By the enactment of Section 31899 et. seq. of the California Government Code, the “grandfather” election under Internal Revenue Code section 415(b)(10) was made for the Association and all retirement systems maintained under the CERL has been made to have this Section apply.

# **SECTION VI. PURCHASE OF PERMISSIVE SERVICE CREDIT**

## **A. General Rule**

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

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

## **B. Permissive Service Credit**

### **1. Permissive Service Credit Defined**

For purposes of this Section, “Permissive Service Credit” means credit:

- a. recognized by the Association for purposes of calculating a Member’s benefit under the Association;
- b. which such Member has not received under the Association; and
- c. which the Member may receive only by making a voluntary additional contribution in an amount determined under the Association, which does not exceed the amount necessary to fund the benefit attributable to the service credit purchased.

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

2. Limitation on Nonqualified Service Credit

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

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

3. Nonqualified Service Credit

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

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

In the case of service described in subparagraphs a, b or c of this paragraph, such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same period of service under more than one plan.

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

4. Trustee-to-Trustee Transfers

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

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

### **C. Repayment of Cashouts**

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

## **SECTION VII. DEFINITIONS**

### **A. Annual Benefit**

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

### **B. Annual Benefit Limit**

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

### **C. Annuity**

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

### **D. Annuity Starting Date**

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

#### **E. Applicable Interest Rate**

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

#### **F. Applicable Mortality Table**

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

#### **G. Employer**

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

#### **H. Limitation Year**

“Limitation Year” means the calendar year.

#### **I. Spouse**

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

#### **J. Straight Life Annuity**

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

## **XVI. REGULATIONS FOR IRC CODE SECTION 415(c) DEFINED CONTRIBUTION LIMITS SECTION I. PURPOSE AND SCOPE**

In accordance with section 31525 and section 31899 et. seq. of the California Government Code, the regulations set forth herein are effective as of May 5, 2015, and reaffirm and clarify the existing practices of the County Employees Retirement Association (the "Association") with respect to the limits on annual additions under section 415(c) of the Internal Revenue Code (the "Code"). For these regulations, the Code includes Treasury regulations issued under section 415(c). To the extent there is a conflict between these regulations and the Code, the Code governs.

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

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

### **SECTION II. ANNUAL ADDITIONS LIMITATION**

#### **A. Annual Additions Limit, In General**

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

### **SECTION III. DEFINITIONS**

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

#### **A. Account**

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

## **B. Affiliate**

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

## **C. Aggregated Plan**

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

## **D. Annual Additions**

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

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

The term “Annual Additions” excludes:

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

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

**E. Employer**

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

**F. Limitation Year**

“Limitation Year” means the calendar year.

**G. Maximum Permissible Amount**

“Maximum Permissible Amount” means the lesser of:

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

**H. Severance From Employment**

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

**I. Total Compensation**

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

## 1. Items Included

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

- a. A Member's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer and any Affiliate to the extent that the amounts are includible in gross income (or to the extent that amounts would have been includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements, or other expense allowances under a non-accountable plan, as described in Treasury regulations section 1.622(c);
- b. Amounts described in Code section 104(a)(3), 105(a), or 105(h), but only to the extent that these amounts are includible in the gross income of the Member;
- c. Amounts paid or reimbursed by the Employer or an Affiliate for moving expenses incurred by a Member, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the Member under Code section 217;
- d. The amount includible in the gross income of an Member upon making the election described in Code section 83(b);
- e. Amounts that are includible in the gross income of a Member under the rules of Code section 409A or Code section 457(f)(1)(A), or because the amounts are constructively received by the Member; and
- f. An amount that is excludable under Code section 106 that is not available to a Member in cash in lieu of group health coverage because the Member is unable to certify that he or she has other health coverage; provided, however, that the Employer does not request or collect information regarding the Member's other health coverage as part of the enrollment process for the health plan.

## 2. Items Excluded

The following items are excluded from Total Compensation:

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

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

### 3. Timing

- a. In order to be taken into account for a Limitation Year, Total Compensation must be paid or made available (or, if earlier, includible in the gross income of the Member) during the Limitation Year. For this purpose, compensation is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code section 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b)).
- b. In order to be taken into account for a Limitation Year, Total Compensation must be paid or treated as paid to the Member prior to the Member's Severance From Employment with the Employer; provided, however, that Total Compensation includes amounts paid to the Member by the later of 2½ months after Severance From Employment or the end of the Limitation Year if the amounts are regular compensation for services during the Member's regular working hours, compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation that absent a Severance From Employment would have been paid to the Member while the Member continued in employment with the Employer.
- c. Total Compensation does not include amounts paid after Severance From Employment that are severance pay, unfunded nonqualified deferred compensation, or any other payment that is not described in the preceding paragraph, even if paid within 2½ months, except for:
  - (i) Payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service to the extent that these payments do not exceed the amounts that the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service; and
  - (ii) Payments to a Member who is permanently and totally disabled; provided, however that salary continuation applies to all Members who are permanently and totally disabled for a fixed or determinable period. For this purpose, a Member is permanently and totally disabled only if the Member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months.

4. Limit

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

## **SECTION IV. AGGREGATION WITH OTHER DEFINED CONTRIBUTION PLANS**

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

## **SECTION V. COORDINATION WITH OTHER DEFINED CONTRIBUTION PLANS**

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

## **SECTION VI. CORRECTION**

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



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