At the request of Trustee Cromer, I prepared this overview regarding the provisions of CERL Article 8.4 that includes preliminary cost information. This is an informational item only. No Board action will be taken today.

CERL Article 8.4 (§31685-31685.96) is an optional provision of the Code that must be adopted by the Board of Supervisors in order to be effective. Article 8.4 addresses Community Property rights in events of legal separation or dissolution of marriage using the “separate account” (aka split account) concept.

MCERA currently utilizes the “shared benefit” methodology when administering benefits assigned due to a separation or divorce. Under the shared benefit approach, the alternate payee (former spouse) receives a portion of any payment (lump sum or monthly allowance) issued to the member. The separate account approach can only be utilized if the member has not yet retired. If a member is already retired at the time of dissolution, the shared benefit approach must be used.

Under the shared benefit methodology, division of the retirement asset is typically a formula that grants the alternate payee 50% of the portion of the benefit derived from the service earned during the period of the marriage. The shared benefit method requires that the member have a qualifying event to trigger payment(s). The alternate cannot receive benefits prior to the date the member receives payment (retires and begins benefit payments or terminates and receives a refund). When administering a shared benefit, the alternate receives their community martial property share in the same form as the member (lump sum refund or retirement allowance). Retirement allowances being paid to the alternate terminate upon the death of the member or qualifying survivor, unless the member selected an optional benefit allowance (usually an Option 4) as provided in the CERL and names the alternate as the beneficiary of a life continuance.

Under the separate account approach, the member’s account – service and contributions earned during the marriage – is divided between the member and alternate. The alternate becomes the owner of a “nonmember” account and may exercise rights as provided in CERL, including the right to purchase or redeposit service available during the period of the marriage, refund, or retire upon attaining age eligibility. One of the primary advantages under the separate account method is that the member and alternate independently elect to receive benefits. The alternate is not required to wait for the member to separate from employment in order to receive their community property
interest, nor is the alternate required to take payment in the same manner (lump sum or monthly) as the member.

One concern raised was whether offering separate accounts creates unforeseen liability stemming from the 60% continuance to a qualifying spouse. Fiduciary counsel determined, after review of CERL provisions, the unmodified option does not provide a continuance to the alternate’s spouse. CERL section 31685 lists the rights provided to the nonmember; 31685 subdivision (c)(5) and (6) express the only benefits that a nonmember may provide to their beneficiary. Fiduciary counsel's opinion is that rights not specifically granted by statute are presumed to be excluded. Using this perspective as the foundation of determining how to administer separate accounts, the nonmember would only have the ability to receive an unmodified allowance, because 31685(c) does not specifically state the nonmember can elect an optional allowance. However, this interpretation is not consistent with how Article 8.4 is administered by other CERL systems which allow the nonmember to select any of the retirement allowances offered by the plan. This serves as an example of one area that would require additional study and direction by the Board before the programming requirements can be defined to obtain the detailed estimate and before the actuarial cost study could be completed.

Government Code section 7507 requires that, when considering changes in retirement benefits, the local legislative body obtain a statement of actuarial impact upon future annual costs, including normal cost and any additional accrued liability, before authorizing any change to plan benefits. Fiduciary counsel stated that because adoption of Article 8.4 is not listed in actions excluded from requiring an actuarial study, a study is required. MCERA’s actuary, Segal Consulting, states that the expected impact on employer contributions associated with providing benefit under Article 8.4 is very difficult to determine because some factors, like how many members and ex-spouses would choose division under the provision and the member demographics, cannot be known ahead of time. Segal recommends preparing the study using an illustrative example of 3-4 (hypothetical or actual) members. Additionally, MCERA would need to provide some guidance regarding the interpretation of sections 31685.9 and 31685.95. Based on the guidelines above, the estimated cost to prepare the study would be $6,000-$9,000 (final charges will be based on actual hours used in the analysis). Segal anticipates that study could be completed within 4 weeks of authorization to proceed and receipt of the guidance on the interpretation of section 31685. The cost for legal counsel’s interpretation of those provisions, if needed, is not included in the estimate.

Before MCERA could administer split accounts, PensionGold would need to be modified to accommodate the functions required by code. Because most rights available to the member are available to the alternate, programming for separate accounts involves touching essentially every function in the software, even obtaining a detailed estimate of the cost to implement split accounts is time consuming. Before authorizing a detailed estimate, I requested a “high-level” estimate for the board’s preliminary discussion. The estimated programming is $30,000-$45,000, based on 200-
300 man hours. If there is interest in pursuing this provision, a more detailed quote would be obtained prior to making a recommendation to the Board of Supervisors. In addition to the programming time, MCERA staff would need to perform User Acceptance Testing before implementation. An estimation of the MCERA staff hours has not been determined. MCERA’s ability to actually process and administer split accounts is contingent on PensionGold programming including a planned, and delayed, upgrade to PensionGold operating environment and other programming needs resulting from the Alameda decision and others, that may take precedence over the split account programming.

A DRO is required whether using a shared benefit or split benefit approach. The split benefit approach allowed in Article 8.4 is easier for the parties to understand and provides flexibility to the member and nonmember regarding receipt of benefits that is not possible under the shared benefit formula.

This item is brought forth at the request of Trustee Cromer on behalf of membership. Trustee Cromer requests direction from the Board whether there is sufficient interest in this matter to obtain legal interpretations where needed and a detailed cost estimate for the programming before returning to the board for consideration.