

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

VOLUNTARY CORRECTION PROGRAM FILING

AND

DETERMINATION LETTER APPLICATION

JUDITH W. BOYETTE
PARTNER
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January 28, 2011

Internal Revenue Service
Attention: SE:T:EP:RA:VC
P.O. Box 27063
Washington, DC 20038-7063

**Re: The Mendocino County Employees' Retirement Association Determination Letter
Application in Conjunction with a VCP Application under EPCRS**

Dear Sir or Madam:

By this letter we respectfully request a (1) correction under VCP and (2) determination letter on the qualification of the Mendocino County Employees' Retirement Association (the "Plan" or "MCERA").

This determination letter application is being submitting in conjunction with a Voluntary Correction Program ("VCP") submission as provided by EPCRS under Revenue Procedure 2008-50. MCERA is a tax qualified defined benefit pension plan. This is also a Code § 414(d) governmental plan treating Cycle E as the initial EGTRRA remedial amendment cycle.

Enclosed in this binder are the forms, statements and documents which are being submitted in support of the request for a favorable determination letter under Revenue Procedure 2010-6 and for VCP correction under Revenue Procedure 2008-50.

Sincerely,



Judith W. Boyette

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

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Invoice Date	Dept.	Document #	Invoice Number	P.O. No.	Invoice Description	Net Invoice Amt
01/13/2011	1920	192002136	JAN 2011 VCP		MCERA 1/11 VCP FEE HANSON BRID	15,000.00

Vendor No.	Vendor Name	Check No.	Check Date	Check Amount
15895	UNITED STATES TREASURY	04087568	01/20/2011	15,000.00

APXCS

THE FACE OF THIS CHECK IS PRINTED GREEN - THE BACK CONTAINS A SIMULATED WATERMARK

$$\frac{11-35}{1210}$$

\$15,000.00

To The
Order Of

Date _____

Meredith Ford

Auditor-Controller

MP

04087568 121000358 0128280100

JUDITH W. BOYETTE
PARTNER
DIRECT DIAL 415 995 5115
DIRECT FAX 415 995 3577
E-MAIL jboyette@hansonbridgett.com

**QUALIFIED
GOVERNMENTAL PLAN –
VCP SUBMISSION**

January 28, 2011

**Expedited Service
Requested**

Internal Revenue Service
Attention: SE:T:EP:RA:VC
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

**Re: VCP Submission for the County Employees' Retirement Law of 1937
Mendocino County Employees Retirement Association**

Dear Sir or Madam:

On behalf of the Board of Retirement of Mendocino County Employees Retirement Association, we respectfully request correction under VCP for the Mendocino County Employees' Retirement Association ("MCERA"), a defined benefit plan. The VCP filing fee of \$15,000 made payable to the United States Treasury is attached to this letter.

However, we strongly believe that the Service should consider reducing this fee in light of the particular situation.

First, the vast majority of the identified "failures" for MCERA and the other '37 Act systems did not occur because of the actions of the retirement system sponsor or the system administrator. They occurred because the rules of the California statute setting out the terms of the retirement system were followed in system administration. For over 30 years the Service took a "hands off" position with respect to applying the tax qualification rules to public sector retirement systems. Therefore, there was no reason for this system to believe that it was not in compliance with the tax laws. Only after many decades of operating under this position, the Service recently decided to step up its interaction with the public sector and emphasize the application of the tax qualification rules to public sector systems. The large fees, based on participant counts under the public sector retirement systems, are applicable primarily because of document errors applying back for decades based on a technical reading of some of the requirements – which the system was not aware applied to them at the time.

Second, the '37 Act retirement systems have expended substantial resources in advance of this filing to assist the Service in its review. On behalf of these systems, we have made a substantial review of the '37 Act compared to the Code – a monumental task in itself – and have identified for the Service, to the best of our ability, all of the potential qualification issues that arise between the Code and the '37 Act. Because many of the issues are the same for these 20 large, complex retirement systems, we believe that treatment under a fee structure similar to the Group Submission rules would be more appropriate.

Finally, if the Service collects from \$15,000 to \$25,000 in VCP fees from each system, that is a collection of over \$ 400,000 in VCP fees alone. This is a significant amount, especially when the majority of issues are the same for all systems. Payment of this large amount of

fees reduces the retirement security of the members of the '37 Act systems because the fees are paid by the independent systems, not by the employers. As a policy matter, we believe this result is not appropriate.

Therefore, in accordance with the prior discussions we had with the Service on behalf of the California State Association of County Retirement Systems ("SACRS") (an association that represents all 20 of the '37 Act systems), we would like to discuss a reduction in the fees paid to the Service by all '37 Act systems in the current VCP filings. We appreciate your careful consideration of this issue.

This application is in two parts. First, a section that deals with the California County Employees' Retirement Law ("CERL" or the "'37 Act"), which governs MCERA. Second, a supplemental application that deals with specific issues for MCERA. An explanation of the role of the CERL and of MCERA-specific administration follows.

An application for a determination letter on MCERA is being filed simultaneously with this VCP application.

I. The CERL

The CERL is the statutory basis for retirement plan benefits and plan administration for the retirement systems (or "plans") of 20 California counties. In total, these systems cover approximately 407,000 members ("participants") and hold approximately \$82 billion to provide retirement benefits.¹ They are among the most successful defined benefit retirement plans in the United States, and pay substantial benefits to tens of thousands of retirees and survivors. Some CERL provisions are mandatory while others are only operative in the counties that adopt them. The mandatory CERL provisions, adopted optional CERL provisions and any adopted regulations and other relevant documents make up each county's plan document. Below we describe the way that the CERL is established, the way that specific CERL provisions are adopted, and the way that retirement systems generally operate under the CERL. These retirement systems are quite different from the private sector and may be unique.

Because no county system can adopt rules that go outside the CERL, a review of the CERL for tax compliance is the foundation for all systems. Therefore, this application for MCERA deals with the CERL as a whole with a supplement for MCERA specific issues.

Discussion of Application

We wish to point out several items concerning this application:

- We have provided to the Service the complete text of the CERL, annotated with legislative history and court decisions as well as other authoritative interpretations. Some of the

¹ Figures are based on data published in the 2009-2010 State Association of County Retirement Systems ("SACRS") membership roster. (SACRS is an association in which all the County retirement systems covered by the CERL participate.)

CERL is relevant only to one or a few systems. It would be very time consuming, and we think, confusing to redact those provisions which do not apply to MCERA.

- We have also provided any additional documents that complete the “plan document” for MCERA.
- We have scoured the CERL, section-by-section, for tax qualification compliance issues. The CERL portion of MCERA’s VCP application includes all that we have found. Additionally, we have provided a tax compliance chart for MCERA that lists all of the tax-qualification Code sections that are applicable and the relevant sections of the CERL with commentary and a reference to the VCP application section, where appropriate. This will be useful both for this VCP application and the accompanying determination letter application.
- In some cases the CERL and MCERA provide benefits or operate in a way that is foreign to private sector plans. We believe that these differences provide better benefits to ‘37 Act system members. Where there might be potential conflicts between the private sector rules and the CERL, we have proposed solutions that will maintain the integrity of the Code rules, the integrity of the CERL, and the existing benefits provided to members.
- California law protects member benefits under the *constitutional* rule of “vested rights.” Vested rights provide much stronger protection for members than does Code § 411(d)(6). Because the rule is embedded in the California Constitution, not even the Legislature can interfere with existing rights. Vested rights severely limit any reduction of member benefits.
- We have found places in the CERL that raise questions about compliance with the Internal Revenue Code (the “Code”) and require correction of the CERL through the Internal Revenue Service’s Voluntary Correction Program (“VCP”). The proposed corrections are in the form of changes to the CERL and/ or model regulations. Since it is very difficult to enact legislation, the preferable method of correction is for each retirement system to make corrections by adopting regulations to the extent permitted under the CERL.
- Systems adopt separate rules and regulations that may create additional issues. System specific failures will also be addressed in this VCP application and this part of the VCP will vary depending on each system’s review of its operations and individual documents.

II. An Overview of the CERL and The Governance Structure

The CERL is embedded in the California Government Code, §§ 31450-31899.10. It is enacted by the Legislature with the approval of the Governor.

The CERL is optional for every one of California’s 58 counties. Twenty counties have elected to adopt the CERL by action of the Board of Supervisors or by action of the voters. For the most part, these are the larger counties with the ability to support the administration of a complex

retirement program. (Most other counties provide retirement benefits through the California Public Employees Retirement System.)

Most '37 Act systems also have been joined/ adopted by some local agencies such as special districts (e.g., fire protection districts) and cities located in the county. Therefore, they are often "multiple employer plans." (Because most California public sector employees are largely union employees, they may also be "multiemployer plans.")

'37 Act systems are governed by a 9-member boards of trustees called "Boards of Retirement." These boards are independent organizations that are given "plenary authority" by California Constitution, Article XVI, Section 17 to administer the systems and invest their assets. Administration includes setting the funding requirements for all contributing employers as well as the day-to-day operation of a retirement system. The independent responsibility of these boards is established and protected by the California Constitution.

These responsibilities come together in a way that does not fit the usual private sector model. Specifically:

- The trustees – the Board of Retirement – have the primary constitutional responsibility for tax compliance. Therefore, MCERA is making this VCP and determination letter application as the plan administrator.
- The county must adhere to the rules established by the trustees – for example, the contribution requirements.
- The participating districts also must adhere to these rules.
- The county (and to a lesser extent, the districts) determine the benefit formula for their employees (the members).
- To a substantial extent, '37 Act systems look and operate much like Taft-Hartley plans because the employers choose a benefit level and the trustees administer the plan based on those choices.
- Neither the trustees nor the employers control the basic governing plan document – the CERL. The Legislature and the Governor control the CERL. They do not, however, have operational responsibility for tax compliance. To the extent that the CERL must be amended for tax compliance, this must occur in the usual – difficult, lengthy and highly political – legislative process, led by the retirement systems with the support of appropriate legislators.
- The CERL does allow the trustees, with the county board of supervisors, to adopt operational regulations within the limits of the CERL.
- This structure means that (i) there is no single entity that the Service can look to, to ensure tax compliance, (ii) the system trustees must take the leading role for compliance,

including working with the Legislature, and (iii) when plan document changes are required, MCERA has proposed to make changes through regulations and, only as absolutely necessary, through legislative changes to the CERL itself.

III. Coordinating Action of all '37 Act Systems – Template Application

This application is made on behalf of MCERA. However, the VCP discussion and proposed corrections for the CERL have been developed by the State Association of County Retirement Systems ("SACRS"). Many systems intend to submit substantially the same application, with appropriate system-specific issues (if any).

In this circumstance, it would be best for the Service as well as for these systems if all '37 Act system applications were reviewed by the same team within the Service.

IV. Expedited Action Requested

We request expedited review of the MCERA VCP application.

INFORMATION REQUIRED BY SECTION 11 OF REVENUE PROCEDURE 2008-50

I. Plan Information

Applicant's Name	Board of Retirement of the Mendocino County Employees' Retirement Association
Applicant's Address	625B Kings Court Ukiah, CA 95482
Applicant's Telephone No.	(707) 463-4328
Applicant's Fax No.	(707) 467-6472
Applicant's EIN	94-6116617
Plan Number	001
Plan Name	Mendocino County Employees' Retirement Association
Type of Submission	Regular Submission
Type of Plan	Governmental Plan (Code §414(d))

Date Plan Year Ends	06/30
Number of Plan Participants	2613
Assets in the Plan	\$ 304,209,225
Name of Applicant's Representative	Judith W. Boyette
Name of Representative's Firm	Hanson Bridgett LLP
Representative's Address	425 Market Street, 26th Floor San Francisco, CA 94105
Representative's Phone No.	415-995-5115
Representative's Fax No.	415-995-3577
Representative's Email Address	jboyette@hansonbridgett.com

II. Description of Failures

A. CERL Document Issues

To the extent any of the following plan document failures cause an operational failure for MCERA, such failures will be addressed as system specific VCP issues in Part II.B below.

1. Code § 401(a)(7) Pre-ERISA Vesting Rules Applicable to Governmental Plans

Please see Tab H for a description of the CERL's 401(a)(7) plan document issue, the relevant current CERL provisions for this issue, and the proposed method of correction.

2. Code § 401(a)(9) – Required Minimum Distributions

Please see Tab I for a description of the CERL's 401(a)(9) plan document issue, the relevant current CERL provisions for this issue, and the proposed method of correction.

3. Code § 401(a)(17) – Compensation Limit

Please see Tab J for a description of the CERL's 401(a)(17) plan document issue, the relevant current CERL provisions for this issue, and the proposed method of correction.

4. Code § 401(a)(31) and Code § 402(c) – Rollovers

Please see Tab K for a description of the CERL's plan document issue related to rollovers, the relevant current CERL provisions for this issue, and the proposed method of correction.

5. Code § 401(a)(36) and Normal Retirement Age

Please see Tab L for a description of the CERL's plan document issue related to normal retirement age, the relevant current CERL provisions for this issue, and the proposed method of correction.

6. Code § 401(h) – Medical Benefit Accounts

Please see Tab M for a description of the CERL's plan document issue related to Code § 401(h) accounts, the relevant current CERL provisions for this issue, and the proposed method of correction.

7. Code § 414(u) – Make-Up Contributions

Please see Tab N for a description of the CERL's plan document issue related to the right to contribute make-up contributions after a military leave of absence, the relevant current CERL provisions for this issue, and the proposed method of correction.

8. Code § 415 – Annual Limits

Please see Tab O for a description of the CERL's 415 plan document issue, the relevant current CERL provisions for this issue, and the proposed method of correction.

9. Miscellaneous CERL Document Issues

- Code § 401(a) – Distribution Restrictions

Please see Tab P for a description of the CERL's 401(a) plan document issue related to distribution restrictions, the relevant current CERL provisions for this issue, and the proposed method of correction.

- Code § 401(a)(1) – Plan Contributions Only by Employers and Employees

Please see Tab P for a description of the CERL's 401(a)(1) plan document issue, the relevant current CERL provisions for this issue, and the proposed method of correction.

- Code § 401(a)(2) – Exclusive Benefit Rule

Please see Tab P for a description of the CERL's 401(a)(2) plan document issue, the relevant current CERL provisions for this issue, and the proposed method of correction.

- Code §401(a)(25) – Actuarial Assumptions Stated in the Plan

Please see Tab P for a description of the CERL's 401(a)(25) plan document issue, the relevant current CERL provisions for this issue, and the proposed method of correction.

B. System Specific Issues

Please see Tab Q for MCERA-specific operational issues, the relevant CERL provisions and other governing documents, and the proposed method of correction.

C. Explanation of How and Why the Failures Arose

See response to Part II.D.

D. Administrative Procedures in Effect at the Time the Failure Occurred

At the time many of the failures occurred, few systems (or the Legislature) were aware that federal tax rules had any relevance to their document or operation. Therefore, there were no specific procedures in place for ensuring that the CERL and regulations adopted under the CERL complied with the tax rules. Maintaining the CERL's tax compliance is further complicated by the fact that the CERL is statutory and it is difficult to timely enact legislation by the amendment deadlines set when new tax qualification rules are established.

E. Description of the Method Used to Locate or Notify Affected Former Employees or Beneficiaries

Each affected former employee will be contacted and notified of any corrective action affecting him/ her with respect to this VCP application. To the extent an affected former employee cannot be located following a mailing to the employee's last known address, MCERA will take reasonable actions to locate that employee. Such actions include the use of the Internal Revenue Service Letter Forwarding Program (see Rev. proc. 94-22, 1994-1 C.B. 608) or the Social Security Administration Employer Reporting Service. After such actions are taken, if an affected employee is not found but is subsequently located on a later date, MCERA will take corrective action towards the affected employee.

III. Applicant's Proposed Revision to Administrative Procedures

The State Association of County Retirement Systems ("SACRS") has established a task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) to monitor tax compliance issues at least annually for all SACRS member systems such as MCERA. MCERA is an active participant in this task force and intends to actively review all tax compliance issues in the future.

IV. Requests Relating to Excise Taxes, Additional Tax, and Tax Reporting

F. Relief from Excise Taxes Under Code §§ 4972, 4973, 4974, 4979 and 72(t)

No request is being made for relief from excise taxes under Code §§ 4972, 4973, 4979, 4974 and 72(t).

G. Plan Loan Failure

Because the CERL does not permit loans and the CERL has not suffered any plan loan failure, no request is being made under section 6.07 of Revenue Procedure 2008-50.

V. Applicant's Representations

H. Under Examination

See signed statement at Tab R.

I. Abusive Tax Avoidance Transactions

See signed statement at Tab R.

J. Compliance Fee

The \$15,000 compliance fee made payable to the "United States Treasury" is attached to the front of this letter.

The Applicant will neither attempt to amortize, deduct, or recover from the Internal Revenue Service any compliance fee paid in connection with this compliance statement nor receive any Federal tax benefit on account of payment of such compliance fee.

Please note, however, that the representatives for the State Association of County Retirement Systems (including MCERA, who are also the representatives of MCERA named above, have had discussions with representatives of the Service regarding an adjustment of the VCP fee for systems whose VCP application involves only issues that are common to all systems operating under the CERL.

K. Penalty of Perjury

See signed statement at Tab R.

ENCLOSED INFORMATION

- Tab A – Form 8717 including determination letter application fee of \$1,000 payable to the “US Treasury”
- Tab B – Determination Letter Application
- Tab C – Signed Appendix C Checklist
- Tab D – Appendix E - Acknowledgement Letter
- Tab E – Form 2848 - Power of Attorney
- Tab F – Most current favorable determination Letter
- Tab G – Tax Compliance Chart
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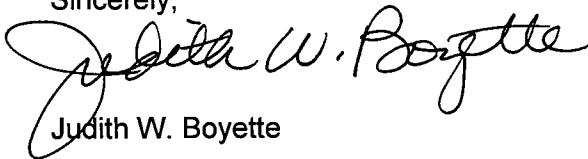
Tab U – Documents supporting employer agreement to pay a portion of employee contributions

Please contact me if you would like additional information about this filing. My contact information is as follows:

Judith W. Boyette
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

415-995-5115 (tel)
415-995-3577 (fax)
jboyette@hansonbridgett.com

Sincerely,



Judith W. Boyette

A

Check Number: 04087567

APXS

"04087567" : 121000358: 01282"80100"

User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request

For
IRS
Use
Only

OMB No. 1545-1772

Amount paid _____

▶ Attach to determination letter application.

1 Name of plan sponsor (employer if single-employer plan)
Board of Retirement of Mendocino County Employees' Retirement Association

2 Sponsor's employer identification number 94-6116617	3 Plan number 001
---	-----------------------------

4 Plan name
Mendocino County Employees' Retirement Association

Caution. If you qualify for the exemption from user fees for small business employers, complete only the certification below (see the instructions on page 2 for details). For all other applications, leave the certification blank and check the appropriate box in column A or B of line 5.

Certification

I certify that the application for a determination letter on the qualified status of the plan listed above meets the conditions for exemption from user fees described in section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Sign Here ▶ _____ Date ▶ _____

Type or print name and title ▶

Form Submitted		Fee Schedule	
		A with Demo 5 and/or Demo 6:	B no Demo 5 and no Demo 6
5a Form 5300:	<input type="checkbox"/> \$ 1,800	<input checked="" type="checkbox"/> \$ 1,000	
b Form 5307:	<input type="checkbox"/> \$ 1,000	<input type="checkbox"/> \$ 300	
c Form 5310:	<input type="checkbox"/> \$ 1,800	<input type="checkbox"/> \$ 1,000	
d			
e Multiple employer plans (Form 5300):			
(1) 2 to 10 Forms 5300 submitted	<input type="checkbox"/> (1) \$ 2,300	<input type="checkbox"/> (1) \$ 1,500	
(2) 11 to 99 Forms 5300 submitted	<input type="checkbox"/> (2) \$ 2,300	<input type="checkbox"/> (2) \$ 1,500	
(3) 100 to 499 Forms 5300 submitted	<input type="checkbox"/> (3) \$ 15,000	<input type="checkbox"/> (3) \$ 10,000	
(4) Over 499 Forms 5300 submitted	<input type="checkbox"/> (4) \$ 15,000	<input type="checkbox"/> (4) \$ 10,000	
f Multiple employer plans (Form 5310):			
(1) 2 to 10 employers maintaining the plan	<input type="checkbox"/> (1) \$ 2,300	<input type="checkbox"/> (1) \$ 1,500	
(2) 11 to 99 employers maintaining the plan	<input type="checkbox"/> (2) \$ 2,300	<input type="checkbox"/> (2) \$ 1,500	
(3) 100 to 499 employers maintaining the plan	<input type="checkbox"/> (3) \$ 15,000	<input type="checkbox"/> (3) \$ 10,000	
(4) Over 499 employers maintaining the plan	<input type="checkbox"/> (4) \$ 15,000	<input type="checkbox"/> (4) \$ 10,000	
g Volume submitter:			
(1) Specimen plan		<input type="checkbox"/> (1) \$ 9,000	
(2) Lead specimen plan (see Rev. Proc. 2005-16)		<input type="checkbox"/> (2) \$ 9,000	
(3) Specimen plan identical to lead specimen plan (see Rev. Proc. 2005-16)		<input type="checkbox"/> (3) \$ 200	
h Master & Prototype (M&P):			
(1) Mass Submitter - per basic plan document with one adoption agreement		<input type="checkbox"/> (1) \$ 9,000	
(2) Mass Submitter - per each additional adoption agreement		<input type="checkbox"/> (2) \$ 650	
(3) Sponsor's identical adoption of M&P Mass Submitter basic plan document - per adoption agreement		<input type="checkbox"/> (3) \$ 200	
(4) Sponsor's minor modification of M&P Mass Submitter basic plan document - per adoption agreement		<input type="checkbox"/> (4) \$ 650	
(5) Nonmass submission by M&P sponsor - per adoption agreement		<input type="checkbox"/> (5) \$ 9,000	
(6) Advisory letter for additional optional provisions - per Mass Submitter basic plan document		<input type="checkbox"/> (6) \$ 650	
(7) Addition of new adoption agreement for approved plan - per Mass Submitter adoption agreement		<input type="checkbox"/> (7) \$ 650	
(8) Assumption of sponsorship of an approved M&P plan		<input type="checkbox"/> (8) \$ 200	
(9) Mass Submitter/sponsor - per trust document in excess of 10		<input type="checkbox"/> (9) \$ 650	
i Group trust		<input type="checkbox"/> \$ 750	

ISA

Form **8717** (Rev. 5-2009)



B

JUDITH W. BOYETTE
PARTNER
DIRECT DIAL 415 995 5115
DIRECT FAX 415 995 3577
E-MAIL jboyette@hansonbridgett.com

January 28, 2011

Internal Revenue Service
Attention: SE:T:EP:RA:VC
P.O. Box 27063
Washington, DC 20038-7063

Re: The Mendocino County Employees' Retirement Association Determination Letter
Application in Conjunction with a VCP Application under EPCRS

Dear Sir or Madam:

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Enclosed are the following forms, statements and documents which are being submitted in support of the request for a favorable determination letter under Revenue Procedure 2010-6. These documents are at the tabs indicated below:

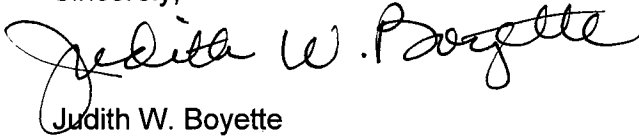
- Tab 1:** Form 8717 – User Fee for Employee Plan Determination Letter Request and a check in the amount of \$1,000 made payable to the United States Treasury.
- Tab 2:** Form 2848 – Power of Attorney and Declaration of Representative.
- Tab 3:** Form 5300 – Application for Determination for Employee Benefit Plans.
- Tab 4:** Last favorable determination letter issued to the Plan.
- Tab 5:** The County Employees' Retirement Law and regulations, policies and by-laws adopted by the MCERA Board of Retirement (Plan Document).
- Tab 6:** Declaration of Trust and Custodial Agreement.
- Tab 7:** Statement Explaining Amendments to the Plan since the last favorable determination letter.

Please contact me if you would like additional information or have questions about this determination letter application submission. Our contact information is as follows:

Judith W. Boyette
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

415-995-5115 (tel)
415-995-3577 (fax)
jboyette@hansonbridgett.com

Sincerely,



Judith W. Boyette

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

Please see Tab A for the \$1,000 user fee for employee plan determination.

User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request

► Attach to determination letter application.

For
IRS
Use
Only

OMB No. 1545-1772

Amount paid _____

1 Name of plan sponsor (employer if single-employer plan)

Board of Retirement of Mendocino County Employees' Retirement Association

2 Sponsor's employer identification number
94-6116617

3 Plan number
001

4 Plan name

Mendocino County Employees' Retirement Association

Caution. If you qualify for the exemption from user fees for small business employers, complete only the certification below (see the instructions on page 2 for details). For all other applications, leave the certification blank and check the appropriate box in column A or B of line 5.

Certification

I certify that the application for a determination letter on the qualified status of the plan listed above meets the conditions for exemption from user fees described in section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Sign Here ► _____

Date ► _____

Type or print name and title ► _____

Form Submitted	Fee Schedule	
	A with Demo 5 and/or Demo 6:	B no Demo 5 and no Demo 6
5a Form 5300:	<input type="checkbox"/> \$ 1,800	<input checked="" type="checkbox"/> \$ 1,000
b Form 5307:	<input type="checkbox"/> \$ 1,000	<input type="checkbox"/> \$ 300
c Form 5310:	<input type="checkbox"/> \$ 1,800	<input type="checkbox"/> \$ 1,000
d		
e Multiple employer plans (Form 5300):		
(1) 2 to 10 Forms 5300 submitted	<input type="checkbox"/> (1) \$ 2,300	<input type="checkbox"/> (1) \$ 1,500
(2) 11 to 99 Forms 5300 submitted	<input type="checkbox"/> (2) \$ 2,300	<input type="checkbox"/> (2) \$ 1,500
(3) 100 to 499 Forms 5300 submitted	<input type="checkbox"/> (3) \$ 15,000	<input type="checkbox"/> (3) \$ 10,000
(4) Over 499 Forms 5300 submitted	<input type="checkbox"/> (4) \$ 15,000	<input type="checkbox"/> (4) \$ 10,000
f Multiple employer plans (Form 5310):		
(1) 2 to 10 employers maintaining the plan	<input type="checkbox"/> (1) \$ 2,300	<input type="checkbox"/> (1) \$ 1,500
(2) 11 to 99 employers maintaining the plan	<input type="checkbox"/> (2) \$ 2,300	<input type="checkbox"/> (2) \$ 1,500
(3) 100 to 499 employers maintaining the plan	<input type="checkbox"/> (3) \$ 15,000	<input type="checkbox"/> (3) \$ 10,000
(4) Over 499 employers maintaining the plan	<input type="checkbox"/> (4) \$ 15,000	<input type="checkbox"/> (4) \$ 10,000
g Volume submitter:		
(1) Specimen plan		<input type="checkbox"/> (1) \$ 9,000
(2) Lead specimen plan (see Rev. Proc. 2005-16)		<input type="checkbox"/> (2) \$ 9,000
(3) Specimen plan identical to lead specimen plan (see Rev. Proc. 2005-16)		<input type="checkbox"/> (3) \$ 200
h Master & Prototype (M&P):		
(1) Mass Submitter - per basic plan document with one adoption agreement		<input type="checkbox"/> (1) \$ 9,000
(2) Mass Submitter - per each additional adoption agreement		<input type="checkbox"/> (2) \$ 650
(3) Sponsor's identical adoption of M&P Mass Submitter basic plan document - per adoption agreement		<input type="checkbox"/> (3) \$ 200
(4) Sponsor's minor modification of M&P Mass Submitter basic plan document - per adoption agreement		<input type="checkbox"/> (4) \$ 650
(5) Nonmass submission by M&P sponsor - per adoption agreement		<input type="checkbox"/> (5) \$ 9,000
(6) Advisory letter for additional optional provisions - per Mass Submitter basic plan document		<input type="checkbox"/> (6) \$ 650
(7) Addition of new adoption agreement for approved plan - per Mass Submitter adoption agreement		<input type="checkbox"/> (7) \$ 650
(8) Assumption of sponsorship of an approved M&P plan		<input type="checkbox"/> (8) \$ 200
(9) Mass Submitter/sponsor - per trust document in excess of 10		<input type="checkbox"/> (9) \$ 650
i Group trust		<input type="checkbox"/> \$ 750

Attach Check or Money Order Here



Power of Attorney and Declaration of Representative

► Type or print. ► See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date ____/____/____

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address Board of Retirement of Mendocino County Employees' Retirement Association (MCERA) 625B Kings Court Ukiah, CA 95482	Social security number(s) Daytime telephone number 707-463-4328	Employer identification number 94-6116617 Plan number (if applicable) 001
---	---	--

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Judith W. Boyette Hanson Bridgett LLP 425 Market Street, 26th FL, San Francisco CA 94105	CAF No. 9005-09391R Telephone No. 415-995-5115 Fax No. 415-995-3577 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Robert A. Blum Hanson Bridgett LLP 425 Market Street, 26th FL, San Francisco CA 94105	CAF No. 0305-77601R Telephone No. 415-995-5830 Fax No. 415-995-3445 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Nancy Hilu Hanson Bridgett LLP 425 Market Street, 26th FL, San Francisco CA 94105	CAF No. 0306-20475R Telephone No. 415-995-5067 Fax No. 415-995-3436 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Determination letter application and	All forms/ matters related to	N/A
VCP filing for the Orange County Employees'	the VCP and determination	
Retirement Association	letter submissions	

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Uses Not Recorded on CAF ☐

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative or add additional representatives, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 1 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan administrator may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (levels k and l) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ► _____

For Privacy Act and Paperwork Reduction Act Notice, see page 4 of the instructions.

Form **2848** (Rev. 6-2008)

7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.


- a If you also want the second representative listed to receive a copy of notices and communications, check this box ☐
- b If you do not want any notices or communications sent to your representative(s), check this box ☐

8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☐

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

► **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

		<u>1/17/2011</u>	Administrator
Signature		Date	Title (if applicable)
James M. Andersen	<input type="text"/>	Board of Retirement of MCERA	
Print Name	PIN Number	Print name of taxpayer from line 1 if other than individual	
_____ Signature		_____ Date	_____ Title (if applicable)
_____ Print Name	<input type="text"/> PIN Number		

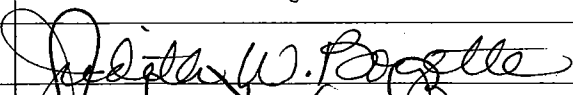
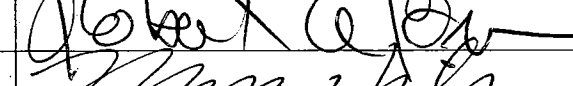
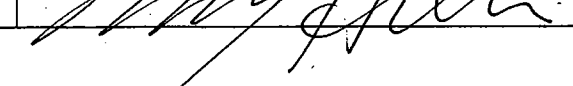
Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program (levels k and l), see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (for example, spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Circular 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See **Unenrolled Return Preparer** on page 1 of the instructions.
 - k Student Attorney—student who receives permission to practice before the IRS by virtue of their status as a law student under section 10.7(d) of Circular 230.
 - l Student CPA—student who receives permission to practice before the IRS by virtue of their status as a CPA student under section 10.7(d) of Circular 230.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

► **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.** See the Part II instructions.

Designation—Insert above letter (a–r)	Jurisdiction (state) or identification	Signature	Date
a	CA		1/26/11
a	CA		1/26/2011
a	CA		1/26/2011

**Application for
Determination for Employee Benefit Plan**
(including collectively bargained plans formerly filed on Form 5303)
(Under sections 401(a) and 501(a) of the Internal Revenue Code)

OMB No. 1545-0197

For IRS Use Only

View the Procedural Requirements Checklist on page 5 before submitting this application.

1a Name of plan sponsor (employer if single-employer plan) <u>Board of Retirement of Mendocino County Employees' Retirement Association</u> Number, street, and room or suite no. (If a P.O. box, see instructions.) <u>625B Kings Court</u> City <u>Ukiah, CA</u> State <u>95482</u> ZIP code	1b Employer identification number <u>94-6116617</u> 1c Employer's tax year ends—Enter (MM) <u>06</u> 1d Telephone number <u>707-463-4328</u> 1e Fax number <u>707-467-6472</u>
2a Person to contact if more information is needed. (See instructions.) (If Form 2848, Power of Attorney and Declaration of Representative, or other written designation is attached, check box and do not complete the rest of this line.) <input checked="" type="checkbox"/> Name Number, street, and room or suite no. (If a P.O. box, see instructions.) City State ZIP code	2b Telephone number 2c Fax number

3a Determination requested for (enter applicable number(s) in the box and fill in required information). (See instructions.)

☐ Enter 1 for Initial Qualification—Date plan signed ▶ _____

☒ **2** Enter 2 for a request after initial qualification—Is complete plan attached? (See instructions.) ▶ Yes ☒ No ☐
Date amendment signed ▶ 9/9/9999 Date amendment effective ▶ 1/1/2010

☐ Enter 3 for Affiliated Service Group status (section 414(m))—Date effective ▶ _____

☐ Enter 4 for Leased Employee status

☐ Enter 5 for Partial termination—Date effective ▶ _____

☐ Enter 6 for Termination of collectively bargained multiemployer or multiple-employer plan covered by PBGC insurance—Date of Termination ▶ _____

b Has the plan received a determination letter? Yes ☒ No ☐
Date of letter ▶ 08/24/1987

If "Yes" submit a copy of the latest letter and subsequent amendments.

Number of amendments ▶ 999

If "No," submit all prior plan(s) and/or adoption agreement(s). (See instructions.)

c Have interested parties been given the required notification of this application? (See instructions) ... N/A ☐ Gov't Plan Yes ☒ No ☐

d Does the plan have a cash or deferred arrangement (section 401(k))? Yes ☐ No ☒

e Does the plan have matching contributions (section 401(m))? Yes ☐ No ☒

f Does the plan have after-tax employee voluntary contributions (section 401(m))? Yes ☐ No ☒

g Does this plan benefit noncollectively bargained employees or are more than 2% of the employees who are covered under a collective bargaining agreement for professional employees? Yes ☒ No ☐
See Regulations section 1.410(b)-9.

h Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(l)? Yes ☐ No ☒

4a Name of plan (Plan name may not exceed 66 characters, including spaces.):

Mendocino County Employees' Retirement Association

001 **b** Enter 3-digit plan number 01/01/1948 **d** Enter plan's original effective date (MMDDYYYY)
12/31 **c** Enter date plan year ends (MMDD) 2613 **e** Enter number of participants (See instructions.)

Under penalties of perjury, I declare that I have examined this application, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

Print Name ▶ James M. Andersen Title ▶ Administrator

Signature ▶ James M. Andersen

Date ▶ 1/17/2011

For Paperwork Reduction Act Notice, see separate instructions.

Form **5300** (Rev. 9-2001)

Benefits and Requirements for Benefits**11a** For defined benefit plans—Method for determining accrued benefit ►(1) Benefit formula at normal retirement age is See attachment.(2) Benefit formula at early retirement age is See attachment.(3) Normal form of retirement benefit is Annuity.**b** For defined contribution plans—Employer contributions:

(1) Profit-sharing or stock bonus plan contributions are determined under:

☐ A definite formula ☐ A discretionary formula ☐ Both

(2) Matching contributions are determined under:

☐ A definite formula ☐ A discretionary formula ☐ Both

(3) Money purchase plan—Enter rate of contribution _____

(4) Target benefit plan—state target benefit formula _____

Miscellaneous**12a** Does any amendment to the plan reduce or eliminate any section 411(d)(6) protected benefit, including an amendment adopted after September 6, 2000, to eliminate a joint and survivor annuity form of benefit? (See instructions.)

N/A Yes No

X

b Are trust earnings and losses allocated on the basis of account balances in a defined contribution plan? If "No," attach a statement explaining how they are allocated.

X

c Is this plan or trust currently under examination or is any issue related to this plan or trust currently pending before:

- The Internal Revenue Service
- The Department of Labor
- The Pension Benefit Guaranty Corporation, or
- Any court?

X

X

X

X

If "Yes," attach a statement explaining the issues involved, the contact person's name (IRS Agent, DOL Investigator, etc.) and their telephone number. Do not answer "Yes" if the plan has been submitted under the Voluntary Compliance Program of the Employee Plans Compliance Resolution System (EPCRS).

Optional determination request regarding the ratio percentage test. A determination regarding the average benefit test may be requested by attaching Schedule Q (Form 5300).

- 13** Is this a request for a determination regarding the ratio percentage test of Regs. section 1.410(b)-2(b)(2) or a request for a determination regarding one of the special requirements of Regs. section 1.410(b)-2(b)(5), (6), or (7)?
- If "Yes," complete only lines 13a through 13n for a ratio percentage test determination, or complete only line 13o for a determination regarding one of the special requirements.

If "No," skip to line 14.

- a** Is this plan disaggregated into two or more separate plans that are not 401(k), 401(m), or profit sharing plans? If "Yes," see the instructions and attach separate schedules for each disaggregated portion
- b** Does the employer receive services from any leased employees as defined in section 414(n)?
- c** Coverage date (MMDDYYYY). See instructions for inserting date.
- d** Total number of employees (include self-employed individuals) (employer-wide)
- e** Statutory and regulatory exclusions under this plan (do not count an employee more than once):
- (1) Number of employees excluded because of minimum age or years of service required
- (2) Number of employees excluded because of inclusion in a collective bargaining unit
- (3) Number of employees excluded because they terminated employment with less than 501 hours of service and were not employed on last day of plan year.
- (4) Number of employees excluded because employed by other qualified separate lines of business (QSLOBs).
- (5) Number of employees excluded because they were nonresident aliens with no earned income from sources within the United States.
- f** Total statutory and regulatory exclusions (add lines 13e(1) through 13e(5))
- g** Nonexcludable employees (subtract line 13f from line 13d)
- h** Number of nonexcludable employees on line 13g who are highly compensated employees (HCEs)
- i** Number of nonexcludable HCEs on line 13h benefiting under the plan.
- j** Number of nonexcludable employees who are nonhighly compensated employees (NHCEs) (subtract line 13h from line 13g)
- k** Number of nonexcludable NHCEs on line 13j benefiting under the plan
- l** Ratio percentage (See instructions.)
- m** Enter the ratio percentage for the following, if applicable:
- (1) Section 401(k) part of the plan
- (2) Section 401(m) part of the plan.

Yes	No
	X

Yes	No

- n** Are the results on line 13l or 13m based on the aggregated coverage of more than one plan?
- If "Yes," attach a statement showing the names, plan numbers, EINs, and benefit/allocation formulas of the other plans.
- All aggregated plans should be filed concurrently.**

- o** If the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7), enter the letter from the list below that identifies the special requirement:

- ☐ A—1.410(b)-2(b)(5)—No NHCEs employed
- ☐ B—1.410(b)-2(b)(6)—No HCEs benefit
- ☐ C—1.410(b)-2(b)(7)—Collectively bargained only

Optional determination request regarding the nondiscrimination design-based safe harbors of section 401(a)(4).

Section 401(k) and/or section 401(m) plans that do not contain a provision for discretionary contributions should not complete this line.

- 14** Is this a request for a determination regarding a design-based safe harbor under section 401(a)(4)?
- If "Yes," complete the following:

Design-based nondiscrimination safe harbors:

- a** Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(l)?

If "Yes," answer line 14b. Otherwise, skip to line 14c.

- b** Do the provisions of the plan ensure that the overall permitted disparity limits will not be exceeded?

- c** Enter the letter ("A" – "G") from the list below that identifies the safe harbor intended to be satisfied ▶

- A—1.401(a)(4)-2(b)(2) defined contribution (DC) plan with uniform allocation formula
- B—1.401(a)(4)-3(b)(3) unit credit defined benefit (DB) plan
- C—1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan
- D—1.401(a)(4)-3(b)(4)(i)(C)(2) flat benefit DB plan
- E—1.401(a)(4)-3(b)(5) insurance account
- F—1.401(a)(4)-8(b)(3) target benefit plan
- G—1.401(a)(4)-8(c)(3)(iii)(b) cash balance plan

- d** List the plan section(s) that satisfy the safe harbor (including, if applicable, the permitted disparity requirements) here:

Yes	No
	X

Procedural Requirements Checklist

*****Form 5300*****

Use this list to ensure that your submitted package is complete. Failure to supply the appropriate information may result in a delay in the processing of the application.

- ☒ 1 Is Form 8717, User Fee for Employee Plan Determination Letter Request, attached to your submission?
- ☒ 2 Is the appropriate user fee for your submission attached to Form 8717?
- ☒ 3 If appropriate, is Form 2848, Power of Attorney and Declaration of Representative, or a privately designated authorization attached? (For more information, see the **Disclosure Request by Taxpayer** in the instructions.)
- ☒ 4 Is a copy of your plan's latest determination letter, if any, attached?
- ☒ 5 Is the Employer Identification Number (EIN) of the **plan sponsor/employer** (NOT the trust's EIN) entered on line 1b?
- ☒ 6 Does line 4d list the plan's original effective date?
- ☒ 7 Is the application signed and dated?
- ☒ 8 Have interested parties been given the required notification of this application?
(See the instructions for line 3c.)
- ☐ 9 If you are requesting a determination as an **Affiliated Service Group**, have you included the information requested in the instructions?
NOTE: You can request a ruling from the IRS as to whether or not you are an **Affiliated Service Group** by listing your request on line 3 of Form 5300.
- ☐ 10 If you answered "Yes" to line(s) 6a and/or line 6b, have you included the information requested in the instructions?
- ☒ 11 **For Multiple Employer Plans:** Have you included the required information as specified in the instructions under **Specific Plans—Additional Requirements**?
- ☐ 12 **For Partial Termination Requests:** If requesting a determination for the plan and one or more employers maintaining the plan, have you included the required information as specified in the instructions under **Types of Determination Letters, Partial Termination**?
- ☒ 13 If you answered "Yes" to line 8a, have you included the requested information?
- ☐ 14 If you are requesting additional determinations, is page 4 completed and/or Schedule Q attached?
- ☐ 15 If filing a Schedule Q, are all appropriate demonstrations attached?
(See Instructions for Schedule Q)

<input type="checkbox"/> Demo 1	<input type="checkbox"/> Demo 5	<input type="checkbox"/> Demo 8	<input type="checkbox"/> Demo 11
<input type="checkbox"/> Demo 3	<input type="checkbox"/> Demo 6	<input type="checkbox"/> Demo 9	
<input type="checkbox"/> Demo 4	<input type="checkbox"/> Demo 7	<input type="checkbox"/> Demo 10	
- ☒ 16 Have you included a copy of the plan, trust, and all amendments since your last determination letter?
- ☐ 17 **For Employee Stock Ownership Plans (ESOP):** Have you attached Form 5309, Application for Determination of Employee Stock Ownership Plan, to your submission?
- ☐ 18 **For PBGC Terminations:** Have you included the required information as specified in the instructions under **Types of Determination Letters**?

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

Form 5300 – Line 3(a)

We used 9/9/9999 as the "date amendment signed" in line 3(a) because changes to the California County Employees' Retirement Law are made by legislation so "date amendment signed" is not applicable.

Form 5300 – Line 3(b)

MCERA received a determination letter on August 24, 1987. We have included a copy of the Association's most current favorable determination letter.

The California County Employees' Retirement Law ("CERL" or the "37 Act") is embedded in the California Government Code, §§ 31450-31899.10. It is enacted by the legislature with the approval of the Governor, as is any legislation. The CERL is the statutory basis for the retirement plan benefits for the system. Since each amendment to the CERL is made through enacted legislation, it would be extremely difficult to provide documentation of each amendment in the traditional format and are too numerous to provide separately. Documentation of all amendments to the CERL can be found in the annotations to each plan section of the enclosed volume of Deering's Annotated Code.

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

Form 5300 – Line 8(a)

The Board of Retirement of MCERA does not maintain any other plan. However, participating employers may sponsor other plans. If the Service would like the plan names, plan types, plan numbers or any other information about such plans, we can compile and send the information upon request.

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

Form 5300 – Line 8(b)

The Board of Retirement of MCERA does not administer or maintain any defined benefit plan other than the Mendocino County Employees' Retirement Association. Participating employers do not sponsor other plans of the same type either.

Form 5300 – Line 8(c)

The Board of Retirement of MCERA does not administer or maintain any plan other than the Mendocino County Employees' Retirement Association.

One participating employer sponsors a defined contribution plan.

However, the top-heavy rules do not apply to governmental plans so Line 8(c) is not applicable to MCERA or any other plan its participating employers may sponsor.

Form 5300 – Line 11(a)

11(a) For defined benefit plans –

(1) Benefit formula at normal retirement age is

Benefit formulas under the CERL are not based on normal retirement age. The benefit formulas that apply to MCERA are found in CERL §§ 31664, 31664.2, 31676.11 and 31676.12. Please see the enclosed Deering's Annotated Code book.

(2) Benefit formula at early retirement age is

Benefit formulas under the CERL are not based on normal retirement age versus early retirement age. The benefit formulas that apply to MCERA are found in CERL §§ 31664, 31664.2, 31676.11 and 31676.12. Please see the enclosed Deering's Annotated Code book.

**Internal Revenue Service
District Director**

Department of the Treasury

P O BOX 36001 STOP SF-4-4-46
SAN FRANCISCO, CA 94102

Date: **4 AUG 1987**

COUNTY OF MENDOCINO
COUNTY COURTHOUSE ROOM 108
UKIAH, CA 95482-0000

Employer Identification Number:
94-6000520
File Folder Number:
680004306
Person to Contact:
MICHAEL ONG
Contact Telephone Number:
(415) 556-0153
Plan Name:
MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION
Plan Number: 001

Dear Applicant:

Based on the information supplied, we have made a favorable determination on your application identified above. Please keep this letter in your permanent records.

Continued qualification of the plan will depend on its effect in operation under its present form. (See section 1.401-1(b)(3) of the Income Tax Regulations.) The status of the plan in operation will be reviewed periodically.

The enclosed document describes some events that could occur after you receive this letter that would automatically nullify it without specific notice from us. The document also explains how operation of the plan may affect a favorable determination letter, and contains information about filing requirements.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other Federal or local statutes.

We have sent a copy of this letter to your representative as indicated in the power of attorney.

This determination letter is applicable for the amendment(s) adopted on May 11, 1983.

This determination letter is applicable for the plan adopted on Feb. 9, 1973.



Letter 835 (DO/CG)

COUNTY OF MENDOCINO

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Frederick C. Nielsen". The signature is written in a cursive style with some loops and flourishes.

Frederick C. Nielsen
District Director

Enclosures:
Publication 794
OPWBP 515

COUNTY OF MENDOCINO

This determination does not apply beginning with any year in which the IRC 415 limits are exceeded in operation.

MENDOCINO COUNTY

EMPLOYEES' RETIREMENT ASSOCIATION

PLAN DOCUMENTS

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION PLAN DOCUMENTS

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RESOLUTION ESTABLISHING

MCERA

ORDINANCE NO. 309

AN ORDINANCE LIMITING WEIGHTS OF VEHICLES AND
LOADS TRANSPORTED OVER LARGO BRIDGE.

The Board of Supervisors of the County of Mendocino DO ORDAIN as follows:

SECTION ONE

No motor or other vehicle shall be operated, driven, or hauled, or transported upon, over or along that certain bridge located in the County of Mendocino, State of California, known as the Largo Bridge, said bridge being located on that certain road running from U.S. Highway 101 in an easterly direction and across Russian River to the County Road running along the east side of Russian River between Old Hopland and Talmage in said County, the total weight of which, including its load, exceeds twelve thousand pounds. A trailer attached to any such vehicle shall be construed as being a part thereof.

SECTION TWO

Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding Five Hundred (\$500.00) Dollars, or by imprisonment in the County Jail not exceeding the term of six (6) months, or by both such fine and imprisonment.

SECTION THREE

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remaining portions of this Ordinance, it being hereby expressly provided that this Ordinance, and each section, subsection, paragraph, sentence, clause or phrase thereof, would have been adopted, irrespective of the fact that any one or more other sections, subsections, paragraphs, sentences, clauses or phrases be declared invalid or unconstitutional.

This ordinance shall be published in the Willits News and shall be effective October 16th, 1947.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS of Mendocino County, State of California, on the 15th day of September, 1947, by the following vote:

AYES: Supervisors Safford, Severance, Lawson, Haehl

NOES: Supervisors None ABSENT: Supervisors: Redwine

ATTEST: W.J. BROADBUSH, County Clerk and
ex-officio Clerk of the Board of Supervisors

By Edith Bell Deputy Clerk

Ed. Haehl
Chairman of the Board of Supervisors of
the County of Mendocino, State of California

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ORDINANCE NO. 310

AN ORDINANCE ACCEPTING AND BY REFERENCE ADOPTING,
THE PROVISIONS OF AN ACT OF THE LEGISLATURE, STATE
OF CALIFORNIA, ENTITLED, "COUNTY EMPLOYEES' RETIRE-
MENT ACT OF 1937".

The Board of Supervisors of the County of Mendocino do ordain as follows:

SECTION ONE

The Board of Supervisors of the County of Mendocino, State of California, does hereby accept the provisions of an Act of the Legislature of the State of California, entitled, "An Act to provide for the creation, establishment, and adjustment with other systems, of a retirement system for employees of the several counties and districts as defined herein, and attaches of municipal courts, consisting of retirement compensation and death benefits," approved June 30th, 1937, being Chapter 677 of the Statutes of 1937, and said Board of Supervisors does

hereby by reference adopt and incorporate all and every one of the provisions of said Act of the Legislature as a part of and applicable to, and make all and every one of said provisions a part of and applicable to, the system and schedules of compensation of all officers, and other persons employed by said County whose compensation is fixed by the Board of Supervisors of said County and whose compensation is paid by said County, and all employees and officers of the County of Mendocino now or hereafter established by ordinance of the Board of Supervisors who are or may hereafter be eligible to the benefits of any retirement system under the provisions of said Act, said Act to become operative January 1st, 1948.

SECTION TWO

This ordinance shall take effect thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage hereof shall be published for at least one week in the Willits News, a newspaper printed and published in the County of Mendocino, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

PASSED AND ADOPTED, as an ordinance of the County of Mendocino, at a regular meeting of the Board of Supervisors held on the 15th day of October, 1947, by the following vote:

AYES: Supervisors Medwine, Gafford, Severance, Lawson, Hachl

NOES: Supervisors: None

ABSENT: Supervisors: None

Ed Hachl
CHAIRMAN of the Board of Supervisors of
the County of Mendocino, State of California

ATTEST:

W.J. BROADBENT, County Clerk and ex-officio
Clerk of the Board of Supervisors

By Edith Burt Deputy Clerk.

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ORDINANCE NO. 311

AN ORDINANCE AMENDING ORDINANCE NO. 309 OF MENDOCINO COUNTY ORDINANCES AND LIMITING RIGHTS OF VEHICLES AND LOADS TRANSPORTED OVER LARGO BRIDGE

The Board of Supervisors of the County of Mendocino DO ORDAIN as follows:

SECTION ONE

Section one of Ordinance No. 309, Ordinances of Mendocino County, is hereby amended to read as follows:

No motor or other vehicle shall be operated, driven, or hauled, or transported upon, over or along that certain bridge located in the County of Mendocino, State of California, known as the Largo Bridge, said bridge being located on that certain road running from U.S. Highway 101 in an easterly direction and across Russian River to the County Road running along the east side of Russian River between Old Hopland and Jalmar in said County, the total weight of which, including its load, exceeds fourteen thousand (14,000) pounds. A trailer attached to any such vehicle shall be construed as being a part thereof.

SECTION TWO

All portions of any ordinance in conflict herewith are hereby repealed.

SECTION THREE

IT IS HEREBY ORDERED that the Clerk of this Board shall cause this ordinance to be published in The Willits News, a newspaper printed in the County of Mendocino, for at least one

COUNTY EMPLOYEES' RETIREMENT LAW

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 52-1670476 **Plan #:** 001

The California County Employees' Retirement Law ("CERL" or the "37 Act") is embedded in the California Government Code, §§ 31450-31899.10. Please see the enclosed volume of Deering's Annotated Code.

The regulations, policies and by-laws provided in the following pages, along with the CERL make up the MCERA plan document.

BY – LAWS

The by-laws represent the portion of MCERA's plan document that establishes plan provisions relating to:

- Explanation of who is eligible to participate
- How member contributions are determined
- Procedures for disability retirement

**MENDOCINO COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION
BYLAWS OF
THE BOARD OF RETIREMENT**

ARTICLE I. ADMINISTRATION

Section 1. NAME: The name of this Association organized in accordance with Government Code Section 31550 is: "MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION."

Section 2. BOARD OF RETIREMENT: The board of Retirement shall consist of the number of members required in the County Employees' Retirement Law of 1937, Government Code, Article 3, as provided for in the amended section of 31520.1.

Section 3. ELECTION OF OFFICERS: At the First Regular Meeting in December the Board of Retirement shall elect one of its members Chair; one of its members Vice Chair, and one of its members Secretary, each to hold office for a term of one year or until a successor is duly elected and qualified. Should any officer for any reason fail to complete this term the Board of Retirement shall select a successor for the balance of the unexpired term at its next Regular Meeting. The County Treasurer shall act as Treasurer of the Retirement Board.

ARTICLE II. MEETINGS

Section 1. REGULAR MEETINGS: Regular Meetings shall be held on the third Wednesday in each month at the hour of 8:30 a.m. in the Conference Room of the Retirement System building or such other place and time as the Treasurer may designate.

Section 2. SPECIAL MEETINGS: Special Meetings may be called at any time by the Chairman or any officer of the Association, or by any Five members of the Board of Retirement upon Notice not less than 48 Hours given to each member.

Section 3. RULES OF ORDER: Roberts' Rules of Order, except as otherwise provided herein, shall guide the Board of Retirement in its proceedings.

Section 4. QUORUM: Five members of the Board of Retirement shall constitute a quorum. No motion may be passed or business transacted without a majority vote of the quorum present.

Section 5. COMMUNICATIONS: Communications and requests to the Board of Retirement shall be made in writing, and the substance of each request, and the action of the Board of Retirement thereon noted in the minutes.

Section 6. MINUTES: The Secretary shall cause to be recorded in the minutes, the

time and place of each meeting of the Retirement Board, the names of members present and absent, all official acts of the Retirement Board, the vote given by members of the Board except where action is unanimous, and when requested, a member's dissent or approval with his reasons, and shall cause the minutes to be written up forthwith and presented for approval at the next Regular Meeting. The minutes or a true copy thereof, submitted by the Secretary and signed by the Chair, or Vice Chair, shall form part of the permanent records of the Retirement Board.

ARTICLE III. MEMBERSHIP

Section 1. FULL TIME EMPLOYEES: For the purpose of these By Laws each person entering the County or District employ becomes a member of the Mendocino County Employees' Retirement Association on the first day of the Pay Period following their entrance into County or District service.

(a) **CONTINUOUS SERVICE:** For the purpose of these By Laws, continuous service for full time employees shall be as defined in the Mendocino County Code Section 3.04.100 "Hours of Work." Not more than one (1) year of credit shall be allowed for any service in any one (1) Fiscal Year. Credit for service of less than one (1) year, as defined in the above section, in any one (1) Fiscal Year shall be allowed on a prorata basis.

(b) **BREAK IN CONTINUOUS SERVICE FORFEITS MEMBERSHIP:** For the purpose of these by Laws, when any full time employee fails to remain in continuous service as defined herein, he shall no longer be entitled to be classified as a permanent employee, and upon such failure becomes ineligible for membership in the Mendocino County Employees' Retirement Association.

Section 2. TEMPORARY, SEASONAL, INTERMITTENT, AND PART-TIME EMPLOYEES: For the purpose of these By Laws, each person whose service for the County or District requires for the performance of duties less than 80% of the full standard of hours required in County or District service, shall be excluded and exempted from membership in the Mendocino County Employees' Retirement Association.

Section 3. NEWLY HIRED EMPLOYEES WHO HAVE ATTAINED THE AGE OF 60 may request, in writing, a waiver of membership in the Mendocino County Employees Retirement Association. In all cases where there is such a waiver, said employee upon attaining the age of 70 shall thereafter be employed from year to year at the discretion of the County. (Section 31552 Government Code)

ARTICLE IV. CONTRIBUTIONS

Section 1. BASIS OF CONTRIBUTIONS: For the purpose of these By Laws, the normal rates of contributions of all members shall be based on age at the time of entrance into the Retirement System and contributions shall be calculated upon the basis

of twenty six (26) pay periods per year.

Section 2. DEDUCTION OF PAST DUE CONTRIBUTIONS: Where a member returns to active service following an absence for sickness or other cause and claims that deducting the total contributions due from the first salary, or wage warrant, drawn would cause practical difficulty and unnecessary hardship, such deductions shall be so apportioned that the total deducted from each warrant will be the current monthly contribution plus two (2) of the past due monthly contributions.

Section 3. REDEPOSIT OF CONTRIBUTIONS WITHDRAWN: Any member may redeposit in the retirement fund, within one (1) year after his reentrance into County or District service, an amount equal to all of the accumulated contributions withdrawn, plus regular interest thereon from the date of separation from the retirement system, except that upon application of the member the Retirement Board may grant an extension of time. (Section 31652 County Employees Retirement Laws of 1937).

Section 4. WITHDRAWALS: When a member, because of termination of his membership in the Mendocino County Retirement Association, withdraws his accumulated contributions, he shall be permitted to withdraw all such contributions with all such accrued interest thereon credited to his account subsequent to the effective date. No additional contributions in excess of those provided in the County Employees' Retirement act of 1937 can be made by any member of the Retirement Association.

ARTICLE V. SWORN STATEMENT

Section 1. EVERY EMPLOYEE OF THE COUNTY OF MENDOCINO OR OF ANY DISTRICT WITHIN SAID COUNTY whose employees become eligible for membership in the Mendocino County Retirement Association shall fill out and properly execute a sworn statement showing date of birth, nature and duration of employment with the county, compensation received, and such other information as is required by the board, which form shall be adopted as the official Mendocino County Employees' Retirement Association's sworn statement. (Article 3, Section 31526 County Employees' Retirement Laws of 1937).

ARTICLE VI. PRIOR SERVICE

Section 1. PRIOR SERVICE SHALL BE ALL SERVICE RENDERED THE COUNTY OF MENDOCINO for compensation which was rendered prior to January 1, 1948. Periods during which a member was not employed for compensation shall not be allowed as prior service, but such breaks will not deprive of service rendered prior to such date. If the employee worked at a lesser salary than Eighty dollars (\$80.00) per month, credit for prior service shall be given in proportion that the lesser salary bears to Eighty dollars (\$80.00) per month. If it is at a larger salary than Eighty dollars (\$80.00) per month, credit shall be given in proportion that that salary bears to the average earnable salary.

ARTICLE VII. ALLOWANCE FOR PUBLIC SERVICE

Section 1. RESOLUTION 3108 PASSED BY THE BOARD OF SUPERVISORS MAY 6, 1958 PROVIDED that the Sections of the County Employees' Retirement Laws of 1937 allowing Retirement credit for prior public service in other public agencies shall be applicable in Mendocino County.

Section 2. EXCEPTION TO RESOLUTION NO. 3108: By Memorandum of Understanding for Fiscal Year 1979-80, the purchase of Public Service or Military Service shall not be allowed for employees entering the service of Mendocino County after the date of July 3, 1979. (Board of Supervisors Resolution No. 79-216)

ARTICLE VIII. PROCEDURES FOR HEARINGS ON DISABILITY RETIREMENT

Purpose

The purpose of this section is to provide a procedure for acting upon applications for disability retirement under the County Employees' Retirement Law of 1937, so that applications can be expeditiously processed, and when a hearing is required by law, the applicant will have notice of the hearing and an opportunity to appear before the Board and present his/her case.

Section 1. DEFINITIONS:

In this section, unless the context or subject matter indicates otherwise, the following terms as used in this chapter shall be ascribed the following definitions:

- a. "Applicant" – a member of the Mendocino County Employees' Retirement Association (MCERA) claiming disability retirement benefits, rights or privileges under the County Employees' Retirement Law (CERL) of 1937, or any person claiming such benefits for any member.
- b. "Application" – the written claim by or on behalf of the member filed by the member, the head of the office or department in which he/she is or was last employed, the board or its agents.
- c. "Association" – shall mean the Mendocino County Employees' Retirement Association established pursuant to the provisions of the CERL of 1937.
- d. "Board" – shall mean the Mendocino County Employee's Retirement Association Board of Directors.
- e. "Department Head" – shall mean the head of a department or office of the County of Mendocino, or contracted Special District, who files an application claiming disability benefits under the CERL of 1937 for a member of the Association who is assigned to that department or office.
- f. "Member" means any person included in the membership of the retirement association pursuant to Article 4 of the CERL of 1937.
- g. "Party" – any person disclosed by the records of the retirement system or by the application to have an interest or possible interest in the subject matter of the Application.

- h. "Retirement Administrator" – the Retirement Administrator of the Mendocino County Employees' Retirement Association (MCERA) or a person authorized by him/her to perform such function hereunder.

Section 2. REPRESENTATION BY COUNSEL

- a. Subject to the provisions of this section, any Party may, at that Party's expense, hire and be represented by an attorney, but no Applicant or member is required to have an attorney at any time. In no case shall a Party's unreasonable delay in retaining an attorney be considered good cause to delay any proceeding.
- b. When any Party is represented by an attorney, that attorney shall promptly file with the Association and serve upon all other Parties written notice of representation, including the attorney's name, address and telephone number. Unless appearing with a Party at a hearing, conference, or Board meeting, an attorney shall not be deemed counsel of record until such notice of representation is duly filed and served. The substitution, withdrawal, or dismissal of an attorney of record shall be in the manner prescribed by the Code of Civil Procedure.

Section 3. APPLICATION

Application for Disability Retirement shall be made pursuant to the CERL of 1937, Government Codes Section 31450 through 31899.

- a. The Application shall be made on a form provided by the Retirement Administrator and shall be submitted to the Retirement Administrator; the application must be COMPLETE and CONTAIN ALL INFORMATION REQUIRED.
- b. The Retirement Administrator shall schedule the Application for consideration at the next Board meeting, but may continue the consideration of the Application if such Application or supporting documents are submitted less than ten (10) working days prior to the next scheduled meeting.

Section 4. MEDICAL RECORDS:

- a. Applicant shall submit at the time of application copies of all medical reports in the possession of the Applicant, upon which the Applicant intends to rely in support of his/her Application indicating:
 - 1. The nature of the injury or disease
 - 2. The degree to which Applicant is incapacitated thereby
 - 3. His/her fitness for performing other duties, and
 - 4. The causal relationship, if any, of the disease or injury to County/District employment
- b. To support the Application for disability retirement, the detailed medical report must also state the member is permanently incapacitated to perform the duties essential to his/her position.
- c. All physician, medical and other costs incurred in preparation of the Application for disability retirement and costs incurred for any and all examinations and medical reports undertaken or prepared at the request of the Applicant, shall be borne solely by the Applicant.
- d. When requested by the Board an Applicant or member for whom a Department Head or the Board has filed an Application, shall make him/herself available for

- and submit to examination by any physician or other expert identified by the Board, and shall submit copies of any and all medical reports within his/her possession or the possession of his/her physician requested by the Board.
- e. All costs for examinations and reports incurred pursuant to directions from the Board shall be chargeable to and be borne by the System. Refusal by a member to comply with the provisions of Section 4d shall constitute grounds for denial of the Application for disability retirement. If examinations occur further than 75 miles from the home of the Applicant, Applicant can request reimbursement of reasonable travel expenses, as determined and approved by the Board

Section 5. BOARD ACTION

- a. Upon receipt of a complete Application with all necessary supporting documents the Board shall:
1. "Grant service-connected disability retirement"; where there is no substantial question that the member is permanently incapacitated for the performance of duty, that the incapacity is a result of injury or disease arising out of and in the course of employment, and that such employment contributes substantially to such incapacity;
 2. (a.) "Grant non-service-connected disability retirement"; where the Applicant has elected to have the Application considered for a non-service-connected disability retirement, and where there is no substantial question that the member is permanently incapacitated for the performance of duty, and that the said incapacity is not a result of injury or disease arising out of and in the course of employment, or that such employment does not contribute substantially to such incapacity;
(b.) If a medical report indicates that a member who has applied for a non-service connected disability retirement or for whom an application for non-service connected disability retirement has been made pursuant to Government Code Section 31721 is capable of performing duties for the Employer other than those for which he/she is allegedly incapacitated, the Board may require the Human Resources Director to submit a report within fifteen (15) days on what positions are, or in the future would be available to the member. (Government Code Section 31725.5)
 3. (a.) "Deny, subject to hearing"; where there is no substantial question that the member is not permanently incapacitated for the performance of duty; or, where the recommendation would be to grant a non-service-connected disability retirement, but the Applicant has not elected to have the Application considered for such. Written notice will be given to the Applicant that if the Applicant fails to file a written request for a hearing within two (2) weeks from the date of such notice, the Applicant will be deemed to have waived his/her right to a hearing. In the event of such waiver, there shall be no further consideration of the Application and the preliminary determination shall be final.
(b.) "Refer to hearing"; where none of the foregoing recommendations is deemed appropriate.

4. Require member to submit to a medical examination by a medical examiner(s), designated by the Board. Failure to appear for a medical appointment requested by the Board may be grounds for denial of the Application. Member shall be responsible for any cancellation fee charged due to failure to appear for an appointment.
5. Permanent incapacity for the performance of duty shall in all cases be determined by the Board. If the medical examination and other available information do not show to the satisfaction of the Board that the member is incapacitated physically or mentally for the performance of his/her duties in the service and the member's Application is denied on this ground the Board shall give notice of such denial to the employer. The Applicant/employer may obtain judicial review of such action of the Board by filing for writ of mandate in accordance with the Code of Civil Procedure or by joining or intervening in such action filed by the Applicant within 30 days of the mailing of such notice. If such petition is not filed or the court enters judgment denying the writ, whether on the petition of the Applicant, the employer, or the member, and the employer has dismissed the member for disability the employer shall reinstate the member to his/her employment effective as of the day following the effective date of dismissal.

Section 6. CONDUCT OF HEARING

- a. When the Board sets a matter for hearing, it shall appoint at the same time pursuant to Government Code Section 31533, either one of its own Directors or a member of the State Bar of California to serve as a referee who shall hold the hearing and shall transmit, in writing, to the Board, his/her proposed findings of fact and recommended decision.
- b. The Board, or its authorized representative shall deliver or mail a notice of hearing to the Applicant or his/her attorney, at least fifteen (15) days prior to the date set for the hearing. A notice of hearing shall be by certified mail to the Applicant at the address shown by the Applicant on his/her Application or at the last known address of the Applicant, as disclosed by the records of the Board. The notice shall specify the time, date, and the place of the hearing.
- c. A court reporter shall be retained for each hearing, and the cost of per diem services for the reporter shall be borne solely by the Association.
- d. The referee shall preside over all hearings under this section. He/she shall exercise such control over the proceedings as is reasonable and necessary. In addition to other duties, he/she shall rule on the admissibility of evidence and shall order a Party to yield the floor when his/her allotted time has been consumed.
- e. Any Member, Applicant or Party is entitled, at his/her expense, to be represented by legal counsel at any hearing before the referee.
- f. Rules of Evidence
 1. At the commencement of the hearing the referee shall identify each document that is being made a part of the record of the hearing. Any and all objections to the admissibility of any document so identified shall be made and ruled upon at the time of identification. Objections not made at that time shall be deemed waived.

2. The hearing need not be conducted according to the technical rules of evidence relating to evidence and witnesses. Any relevant evidence is admissible if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs.
 3. Oral evidence shall be taken only on oath or affirmation.
 4. Each Party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses on any matter relevant to the issues. If the applicant or any other party does not testify in his own behalf, he may be called as if under cross-examination.
 5. Refusal of any Applicant or Party to answer relevant questions on grounds other than the Fifth Amendment to the United States Constitution or some similar privilege against self-incrimination authorized by law, where applicable, or the refusal of any Applicant or Party to submit to medical examination shall be sufficient reason for considering such questions or such refusal to submit to medical examination in a way unfavorable to the refusing party, and such refusal may result in dismissing the Application of the Applicant or Party seeking affirmative relief.
 6. The Parties shall furnish to the referee, upon his/her request at any time during the course of the hearing, such additional evidence, including additional medical reports, at the Applicant's own expense, which the referee in his/her opinion deems necessary to deciding the factual issues and making his/her recommendation to the Board. Refusal to furnish such additional evidence shall be grounds for terminating the hearing and recommending to the Board that the Application for disability retirement be rejected.
- g. Within thirty days after a matter is submitted to a referee for a recommended decision, the referee shall file with the Board and serve upon all Parties a written report that includes the referee's summary of the evidence, proposed findings of fact, recommended decision, and proof of service on all Parties.
- h. The Parties shall have ten days from the date of receipt of the referee's report by the Parties to file written objections with the Retirement Association, along with proof of service upon all other Parties. Any timely filed objections shall be incorporated in the record to be considered by the Board. The Board shall not consider untimely written objections, or oral objections or arguments from any Party that has not filed timely written objections.

Section 7. POWERS OF BOARD

- a. When a referee's report is filed with the Retirement Association pursuant to Section 6, the Retirement Association shall cause the matter to be placed on the agenda of the next regular Board meeting to take place after the expiration of the period in which the Parties may file written objections. The Board may, but is not required to, hear oral arguments from any Party that has filed timely written objections, subject to the same limitations as apply to public comments during Board meetings. The Board may confer in closed session with the attorney representing the Retirement Association in the matter. The Board shall take one of the following actions:
1. Approve and adopt the proposed findings and the recommendations of the referee; or

2. Require a transcript or summary of all testimony, plus all other evidence received by the referee. Upon the receipt thereof the Board shall take such action as in its opinion is indicated by such evidence; or
3. Refer the matter back with or without instructions to the referee for further proceedings; or
4. Set the matter for hearing before itself. At such hearing the Board shall hear and decide the matter as if it had not been referred to the referee. Any hearing conducted by the Board shall comply with the provisions contained herein relating to hearings, except that the Chair of the Board shall perform the functions of the referee in the hearing conducted by the Board.

Section 8. HEARING BEFORE THE BOARD

- a. If a hearing is held before the Board, the Board shall decide all material issues no later than the second regular meeting following the meeting at which the matter is submitted or as soon as is practical considering the complexity of the issue.
- b. No Director who has not been in attendance during any portion of a hearing on an Application for disability retirement shall participate in the determination by the Board of the Application, unless the Director has read a transcript of that portion of the hearing in which he/she was not in attendance, and has stated on the record that such review has been undertaken and completed.

Section 9. DECISION OF THE BOARD

- a. Five members of the Board shall constitute a quorum for a hearing held before the Board pursuant to the provision of these by-laws. With respect to any such hearing, no findings of fact or decision by the Board shall be valid or effective without a majority vote of the quorum present. A tie vote results in a failure to find in favor of the Applicant and constitutes a denial of the Application or that portion of the Application on which the vote is taken.
- b. For Applications submitted to a referee, the Board shall render its decision by the first regular meeting following the meeting at which the matter is submitted to the Board, or the meeting at which all material issues were resolved.
- c. Written notice of the decision of the Board shall be delivered or mailed to the Applicant and each Party at their last known address within ten (10) days following the date the decision is rendered.

Section 10. JUDICIAL REVIEW

- a. Judicial review of any decision by the Board shall be filed within the time limits specified in Code of Civil Procedure section 1094.6(b). Notice of the time limitation for filing for judicial review shall be given by the Board in substantially the following form:

NOTICE IS HEREBY GIVEN that the time in which judicial review must be sought in the above, (date of decision) entitled matter, by the

Mendocino County Employees Retirement Association Board of Directors is governed by Code of Civil Procedure Section 1094.6.

- b. Any request for preparation of the administrative record pursuant to Code of Civil Procedure section 1094.6 shall be made in writing and filed with the Retirement Association. The Retirement Association shall, within ten days of receiving such a request, notify the requesting Party of the estimated cost of preparing the record. Any requesting party other than the Employer or the Retirement Association shall, within ten days of receiving such notification, deposit with the Retirement Association an amount sufficient to cover the estimated cost. If the cost of preparing the record exceeds the amount deposited, the Party requesting the record shall pay the excess.

Section 11 DISABILITY BENEFICIARIES UNDER 55 YEARS OF AGE

The Retirement Association may request information from any disability beneficiary under fifty five years of age in the manner prescribed in Section 4, and may require any such beneficiary to undergo medical examination pursuant to Government Code Section 31729. If from such information and medical examination it appears that the disability retirement beneficiary may no longer be incapacitated, the Retirement Association shall so report in writing to the Board. The Board may order a hearing on the issue of incapacity, in which case the procedures shall be the same as those provided in this Article for Applications for disability retirement.

ARTICLE IX. HEALTH INSURANCE

Effective September 1, 1998 Retiree Health Insurance coverage became the responsibility of the County, please refer to County Resolution 98-147.

ARTICLE X. BOARD OF RETIREMENT ELIGIBILITY AND ELECTION.

Section 1. SUBJECT TO THE PROVISIONS OF ARTICLE 3, Section 31520.1 of the Government Code, County Employees' Retirement Laws of 1937, any active member of the Mendocino County Employees' Retirement Association shall be eligible to serve on the Board of Retirement of said Association unless prohibited by law, and providing the required probationary employment period has been served and the employee has been certified as a permanent employee.

Section 2. On or prior to September 1, of each year, the Retirement Administrator shall notify the Board of Supervisors of the County of Mendocino and the County Clerk of said County of the name or names of the Retirement Board Members for whom successors must be appointed or elected. The Retirement Administrator shall provide a list of the members of this Association as of the First Pay Period in October of said year who shall be entitled to vote in said election.

- (a) As provided in Section 31520.1 of the Government Code, County

Employees' Retirement Laws of 1937, the Board of Retirement shall consist of Nine (9) members and One (1) alternate, as follows:

- (1) The FIRST member shall be the County Treasurer.
- (2) the SECOND and THIRD members shall be Members of the Mendocino County Retirement Association, other than Safety Members, elected by such Members.
- (3) The FOURTH, FIFTH, SIXTH, and NINTH members shall be qualified electors of the County of Mendocino who are not connected with Mendocino County government in any capacity, except One (1) may be a Mendocino County Supervisor, and shall be appointed by the Board of Supervisors.
- (4) The SEVENTH member shall be a Safety Member of the Mendocino County Employees' Retirement Association, elected by the Safety Members.
- (5) The EIGHTH member shall be a retired member elected by the Retired Members of the Mendocino County Employees' Retirement Association in a manner to be determined by the Board of Supervisors.
- (6) The ALTERNATE member shall be that candidate, if any, for the Seventh member from the group under Section 31470.2 or 31470.4, which is not represented by a Board Member who received the highest number of votes of all candidates in that group. If there is no such candidate there shall be no Alternate Member.

Section 3. No less than Thirty (30) days prior to the election, the County Clerk and/or Retirement Administrator shall mail or cause to be distributed to each member who is entitled to vote at the forthcoming election, a Notice of Election.

Section 4. A qualified member may be nominated for one of the positions to be filled by filing a "DECLARATION OF CANDIDACY BY CANDIDATE" FORM. The Declaration of Candidacy by Candidate shall be made upon forms prepared by the County Clerk and/or Retirement Administrator. A supply of such forms shall be maintained in the County Clerks/Elections Office and/or the Office of the County Treasurer/Retirement Administrator.

- (a) The Declaration of Candidacy by Candidate forms shall be filed on the date specified within the NOTICE OF ELECTION, not more than Forty (40) days nor less than Twenty five (25) days prior to the elections.

Section 5. The County Clerk and/or Retirement Administrator shall cause the

names and department of those persons nominated for the Board of Retirement to be printed upon ballots of such form as may be determined by the County Clerk and/or Retirement Administrator.

(a) There shall be no provisions for write-in Candidates.

Section 6. As provided in Section 31523, Government Code, County Employees Retirement Laws of 1937, if an election to fill a vacancy for the Second, Third, Seventh, or Eight member has been called and only one member has been duly nominated in accordance with the rules established for the holding of such election, the Board of Supervisors shall order that no election be held and shall direct the County Clerk and/or Retirement Administrator to cast a unanimous ballot in favor of such nominated member.

Section 7. Not less than Ten (10) days prior to the election date in November of each year, the County Clerk and/or Retirement Administrator shall mail, or cause to be distributed to each member authorized to vote at said election one of said ballots together with a ballot envelope and instructions for return of same.

(a) Instructions shall indicate that the voted ballot shall be placed in the envelope marked "Ballot Envelope" or words of like effect, which shall then be sealed:

The Ballot Envelope shall in addition to the return address of the County Clerk and/or Retirement Administrator contain provision for the signature of the Member and the name of the County Department or District to which he belongs.

Said instructions shall further indicate that said Ballot Envelope, in order for the ballot to be counted, must be returned to the County Clerk/Elections Office and/or the County Treasurer/Retirement Administrator's Office by Five (5) o'clock p.m. on the date specified for the election.

Section 8. On the day following the date of election, the County Clerk and/or Retirement Administrator shall publicly canvass the returns of said election and shall certify the results thereof to the Board of Retirement and to the Board of Supervisors of the County of Mendocino. The County Clerk and/or Retirement Administrator shall canvass the returns. The Candidate receiving the highest number of votes shall be declared elected.

Section 9. It is required that the successful candidate complete a statement pursuant to the Conflict of Interest Code. This form is available in the Office of the Registrar of Voters, Mendocino County Courthouse and should be filed within Thirty (30) days after date of election with the Registrar of Voters with a copy of said statement filed with the Retirement Administrator.

Section 10. Whenever a deadline for a procedure associated with a Retirement Board election falls on a holiday or weekend, the final day for completion of the procedure affected by the deadline shall be the last business day preceding such deadline.

ARTICLE XI AMENDMENTS

Section 1. These By-Laws may be amended from time to time by Six-ninths (6/9) vote of the Retirement Board.

THE FOREGOING BY LAWS revise and amend those By Laws which were adopted by the Board of Retirement on the 9th day of February, 1973;

FIRST AMENDMENT adopted the 11th day of October, 1974;

SECOND AMENDMENT adopted the 10th day of June, 1977;

THIRD AMENDMENT adopted the 14th day of September, 1979;

FOURTH AMENDMENT adopted the 11th day of May, 1983;

FIFTH AMENDMENT adopted the 13th day of March, 1985;

SIXTH AMENDMENT adopted the 12th day of March, 1986;

SEVENTH AMENDMENT adopted the 9th day of April, 1986;

EIGHTH AMENDMENT adopted the 10th day of June, 1987;

NINTH AMENDMENT adopted the 9th day of March, 1988;

TENTH AMENDMENT adopted the 17th day of November, 1999

ELEVENTH AMENDMENT adopted the 11th day of April 2003 for Disability application change and the 11th day of June 2003 for meeting day change, by the following vote:

AYES: Duman, Grothe, Rosetti, Fisher, Cliburn, Pearce, Knudsen,

ABSENT: Mirata, Shoemaker

ALL OF WHICH have been included in and have become a part of the MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION By Laws of the BOARD OF RETIREMENT, approved and adopted by the Board of Supervisors the ____ day of _____, 2003

Chairman,
Board of Retirement
Mendocino County ERA

DEFINITION OF

COMPENSATION EARNABLE

RESOLUTION NO. 97-98 -

RESOLUTION OF THE BOARD OF MENDOCINO COUNTY EMPLOYEES RETIREMENT
ASSOCIATION TO IMPLEMENT THE DECISION OF THE CALIFORNIA SUPREME
COURT REGARDING COMPENSATION EARNABLE AND FINAL COMPENSATION

WHEREAS, on October 1, 1997, the decision of the California Supreme Court, in
Ventura County Deputy Sheriff's Association v. Board of Retirement of The Ventura County
Employee Retirement Association ("Ventura County"), became final;

WHEREAS, the Supreme Court in such Ventura County case mandated a change in the
method for calculating pension benefits for members and their beneficiaries by retirement
systems governed by the County Employees Retirement Law of 1937.

WHEREAS, the Board of Retirement desires to implement the decision of the Supreme
Court by taking action to include within "compensation earnable" and "final compensation"
specific cash payments made to employees not previously recognized as such; and

WHEREAS, the Board of Retirement desires to establish policies on issues not
specifically addressed by the Supreme Court decision with regard to certain cash payments made
to employees.

THEREFORE, BE IT RESOLVED, AS FOLLOWS:

- A. The previous measurement of "compensation earnable" as set forth on the various
Resolutions adopted by the Board of Retirement, shall continue to apply.
- B. The Board of Retirement hereby adopts the following additional items as "compensation
earnable" and "final compensation" for retirement purposes to be added to base salary:
 - 1. Bilingual Premium Pay
 - 2. Miscellaneous Earnings Adjustments
 - 3. Taxable Automobile Allowance (excludes mileage reimbursement)
 - 4. Annual Vacation Redemption - limited to Annual Leave actually redeemed by
member during the normal course of active service, and within the 12 or 36 months
period to be used for measurement of final compensation, not to exceed the number of
hours actually accrued by the member during such measurement period, reduced by
the number of hours of annual leave the member was required to use in order to
qualify to redeem annual leave.
 - 5. Travel Time Pay (Straight time pay while traveling)
 - 6. Taxable Uniform Allowance
 - 7. Animal Handling
 - 8. Field Training
 - 9. Night Shift Differential

10. Supervisory Night Shift Differential
11. On Call Pay
12. Shift Differential p.m. Mental Health
13. Shift differential a.m. Mental Health

- C. The Board of Retirement hereby formally excludes from "compensation earnable" and "final compensation" any lump sum payment made to a member as a result of his or her separation from service. Examples of such payments would be, but are not limited to, payment to any member upon separation from service of their accrued annual leave, vacation or sick leave balances.
- D. The Board of Retirement retains the right to make further determinations on the eligibility of any cash payments made to members as brought to the attention of the Board.
- E. The provisions of this Resolution shall be implemented by the Mendocino County Auditor-Controller effective with pay period 98-01. The Board retains the right to make future determinations with respect to the retroactive collection of employer and employee retirement contributions.
- F. No retirement benefit shall be paid to a member if the amount of such benefit is in excess of Section 415 of the Internal Revenue Code, of the United States.

The above and foregoing resolution was introduced by Board of Retirement Member DUMAN who moved for its adoption, seconded by Board of Retirement member PINTANE, and was


PASSED AND ADOPTED by the Mendocino County Employees Retirement Association Board of Retirement this 10 day of JUNE by the following vote:

AYES: DUMAN, THURSTON, CARTER, BOYES, PINTANE, KNUDSEN, FISHER

NOES: 0

ABSENT; SHOEMAKER, LANGE

WHEREUPON, THE Chairman declared this resolution passed and adopted, and SO ORDERED.



William Fisher, Chairman
Board of Retirement

COST OF LIVING ADJUSTMENT

ORDINANCES

ORDINANCE NO. 71-747-4

ORDINANCE ADOPTING COST OF LIVING ADJUSTMENT
FOR COUNTY EMPLOYEES RETIREMENT SYSTEM.

The Board of Supervisors of the County of Mendocino ordains as follows:

Article II, entitled "Retirement," of Chapter 14, entitled "Personnel," of the Mendocino County Code is hereby amended to add the following section:

"SEC. 14-23.5. COST OF LIVING ADJUSTMENT. Pursuant to Section 31874 of the Government Code, the Board of Supervisors of the County of Mendocino does hereby adopt, incorporate by reference, and make applicable in Mendocino County Article 16.5 of the County Employees Retirement Law of 1937, including Section 31870.1 of the Government Code, which authorizes a maximum annual increase or decrease of cost of living allowance of 3 per cent."

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 23 rd. day of February, 1971, by the following vote on roll call:

AYES: Banker, Barbero, Avila, Galletti, Sawyers

NOES: None

ABSENT: None

WHEREUPON, the Chairman declared this ordinance passed and adopted and SO ORDERED.

Harvey Sawyers

Chairman, Board of Supervisors

ATTEST:

VIOLA N. RICHARDSON
Clerk of Said Board

By _____
Deputy Clerk

RECEIVED

RESOLUTION NO. 80-242

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF MENDOCINO ADJUSTING RETIREMENT BENEFITS

WHEREAS, the representatives of the Board of Supervisors of Mendocino County have met and conferred with representatives of the Mendocino County employees concerning the adjustment of retirement benefits; and

WHEREAS, certain adjustments specified below have been agreed to.
NOW, THEREFORE, BE IT RESOLVED that pursuant to the most recent Memoranda of Understanding with the employee groups, the Board of Supervisors hereby adopts for all new non-safety retirement system members the definition of final compensation set forth in Government Code Section 31462 as follows:

"Final Compensation" means the average annual compensation earnable by a member during any three years elected by by a member at or before the time he files an application for retirement, or, if he fails to elect, during the three years immediately preceding his retirement. If a member has less than three years of service, his final compensation shall be determined by dividing his total compensation (by) the number of months of service credited to him and multiplying by twelve."

BE IT FURTHER RESOLVED that pursuant to Mendocino County Code Section 3.08.030, the annual cost of living increase for new employees shall be three percent.

The above and foregoing resolution was introduced by Supervisor

Banker, seconded by Supervisor de Vall

and carried this 29th day of July, 1980, by the following vote on roll call:

AYES: Supervisors Barbero, Banker, Eddie, de Vall, Cimolino

NOES: None

ABSENT: None

WHEREUPON, the Chairman declared the resolution adopted, AND SO ORDERED.

John Cimolino
CHAIRMAN

ATTEST: ALBERT P. BELTRAMI
CLERK OF SAID BOARD

BY JOYCE A. BEARD
Deputy Clerk

RECEIVED

AUG 5 1980

TREASURER-TAX COLLECTOR
MENDOCINO CO.

INTEREST RATE CREDIT RESOLUTION

MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION
INTEREST CREDITING AND UNDISTRIBUTED EARNINGS POLICY

PURPOSE AND BACKGROUND

1. The purpose of this policy is primarily to provide benefit security for members of the Mendocino County Employees' Retirement Association (MCERA) and secondarily to achieve and maintain stable employer contributions that are as low as possible. The authority of the Board of Retirement (Board) in such matters is governed by the provisions of the County Employees' Retirement Law of 1937 ('CERL'), Government Code sections 31591 and 31592 (et. seq.), and other provisions of state and federal law applicable to MCERA.

OBJECTIVES

2. The objectives of this policy are to:
 - a) Provide for long term, stable funding of the retirement system through the reasonable and prudent allocation of earnings; and
 - b) Provide guidance to MCERA staff to ensure appropriate allocation of earnings to reserve accounts, including the appropriate allocation of undistributed (excess) earnings.

DEFINITIONS

"Available Earnings" are the most recent annual earnings of the fund calculated on an accounting methodology pursuant to Government Code Sections 31591 and 31592 (et seq.), plus any fund balance in Undistributed Earnings including the Contingency Reserve. Specifically, Available Earnings are the annual net value of:

- a) Interest, dividend and principal payments on fixed income investments;
- b) Gains and losses on the sale of fixed income investments;
- c) Gains and losses on the sale of equities;
- d) Aggregate market value of investments in excess of the cost value of those investments;
- e) Recapture of commissions;
- f) Rental income;

g) Balance of Accrued Undistributed Earnings

h) Changes decreasing Contingency Reserve

Less

i) Building expenses on real estate held for investment, occupancy and rental purposes;

j) System expenses;

k) Changes increasing Contingency Reserve.

“Undistributed Earnings” are the accrued earnings of the fund calculated on an accounting methodology after payment of system expenses and in excess of earnings posted to the appropriate valuation reserves (i.e., Members Deposit Reserve, County Advance Reserve, and Retired Members Reserve) and the Contingency Reserve.

POLICY GUIDELINES

3. Available Earnings of MCERA will be allocated prior to December 31st of each fiscal year in an amount not to exceed one half (1/2) of the actuarial assumed earnings rate for that fiscal year, and prior to June 30th of the same fiscal year in an amount not to exceed the total actuarial assumed earnings rate for that fiscal year. The earnings will be allocated in the following order:

a) Payment of system expenses; then

b) Credit of regular interest to the following valuation reserves (all at an equal rate):

1) (Active) Members Deposit Reserve;

2) County Reserves; and

3) Retired Members Reserve; then

c) Replenish the Contingency Reserve to an amount no less than 1% of assets; then

d) Credit the balance to Undistributed Earnings.

4. Undistributed Earnings of MCERA will be allocated in the follow order:
- a) Credit to County Advance Reserve and Retired Members COLA Reserve so as to reduce the unfunded accrued actuarial liability ("UAAL") of the system until an actuarial funded ratio of 100% exists; then
 - b) Credit the balance to the Unallocated Fund Balance for any use consistent with the CERL and approved by the Board of Retirement.

POLICY REVIEW

5. This Policy is subject to change in the exercise of the Board's judgment. The Board will review this policy at least every two years to ensure that it remains relevant and appropriate and consistent with state and federal laws and regulations. In the event of legislative changes to the pertinent sections addressed in this policy, the Board will review the policy as appropriate.

POLICY HISTORY

6. The Board adopted this policy on June 16, 2010.



Timothy Pearce, Board Chair

6/23/10

Date

RESOLUTION

REDUCING OF RETIREMENT AGE

FOR VESTING

RESOLUTION NO. 82-119

RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF MENDOCINO AUTHORIZING RETIREMENT
AT AGE 50.

WHEREAS, Government Code § 31672 states:

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MAY 28 1982

TREASURER-TAX COLLECTOR
MENDOCINO COUNTY

"Any member who has reached the age of 70 years or any member who has completed 10 years of service and who has reached the age of 55, or any member who has completed 30 years of service regardless of age, may be retired upon filing with the board a written application, setting forth the date upon which he desires his retirement to become effective which shall be not more than 60 days after the date of filing the application. The age of 55 in the preceding sentence may be reduced to age 50 in any county by resolution of the board of supervisors."

;and

WHEREAS, Government Code § 31672.1 states:

"Any employee who has reached the age of 55 years, has held a position in the county service for 10 years, and on the date of his retirement is employed in a temporary, seasonal, intermittent, or part-time position in which he has received credit for five full years of service, may be retired upon filing with the board of written application, setting forth the date upon which he desires his retirement to become effective which shall not be more than 60 days after the date of filing the application. The age of 55 in the preceding sentence may be reduced to age 50 in any county by resolution of the board of supervisors if such reduction has also been made under § 31672."

NOW, THEREFORE, BE IT RESOLVED:

1. The age of 55 set forth in Government Code § 31672 and 31672.1 is hereby reduced to age 50.

2. Pursuant to Government Code § 31672 any member who has completed 10 years of service and who has reached the age of 50, may be retired upon filing with the Board a written application, setting forth the date upon which he desires his retirement to become effective which shall be not more than 60 days after the date of filing the application.

3. Pursuant to Government Code § 31672.1, any employee

who has reached the age of 50, has held a position in County service for 10 years, and on the date of his retirement is employed in a temporary, seasonal, intermittent, or part-time position in which he has received credit for five years of service, may be retired upon filing with the Board a written application, setting forth the date upon which he desires his retirement to become effective and shall not be more than 60 days after the date of filing the application.

The foregoing resolution was introduced by Supervisor Cimolino, seconded by Supervisor Hamburg, and carried on this 25th day of May, 1982 by the following roll call vote:

AYES: Supervisors Crofoot, Hamburg, Cimolino, de Vall
NOES: Supervisor Eddie
ABSENT: None

WHEREUPON, the Chairman declared the resolution adopted and SO ORDERED.

Wm. J. de Vall
CHAIRMAN, Board of Supervisors

ATTEST: ALBERT P. BELTRAMI
Clerk of said Board

BY: Jay A. Beard
Assistant Clerk of the Board

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

ALBERT P. BELTRAMI
Clerk of the Board
By: Jay A. Beard
Asst.

RETIREE HEALTH BENEFITS

File

RESOLUTION NO. 98-147
RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS
REGARDING FUNDING RETIREE HEALTH INSURANCE BENEFITS

WHEREAS, the County of Mendocino Employees' Retirement Association was established in accordance with the provisions of the County Employee's Retirement Law of 1937 (the "1937 Act"; Government Code Sections 31450 - 31899.10); and

WHEREAS, Government Code Section 31592.4 is made operative in Mendocino County only when adopted by Resolution by majority vote of the Mendocino County Board of Supervisors and the Mendocino County Employee's Retirement Association ("MCERA") Board of Retirement; and,

WHEREAS, when Government Code Section 31592.4 is made operative in Mendocino County and subsidies are provided in accordance with governing rules currently in effect, the manner of providing health care subsidies will be in compliance with federal tax laws for qualified retirement plans and such subsidies will remain nontaxable to such retirees; and,

WHEREAS, under Government Code Section 31592.2, MCERA may transfer all, or any part, of surplus earnings in excess of 1 percent of the total assets of the retirement system into County Advance Reserves for the sole purpose of payment of the costs of health benefits; and,

WHEREAS, the Board of Supervisors and the MCERA Board of Retirement desire to formally adopt Section 31592.4 in order to comply with Section 401 of the Internal Revenue Service (IRS) Code of the United States by: (1) the Board of Supervisors annually determining the level, if any, of subsidization to defray the cost of retiree health insurance benefits; and (2) any cost arising out of subsidization of that level shall first be funded by MCERA excess earnings during the preceding fiscal years; and,

WHEREAS, the Board of Supervisors has determined to adopt by resolution Government Code Section 31592.4 as applicable and operative in the County of Mendocino with the following benefit levels, eligibility criteria and estimated costs:

- (1) Current Retired Employees will be eligible for the full benefit which will be capped at an amount which will not exceed limits imposed by IRS Code or will not exceed available excess earnings of Retirement System assets. If IRS Codes limit the amount which can be paid by the County, or excess earnings are not sufficient to pay the full benefit, 50% of the shortfall will be paid by the retirees and 50% of the shortfall will be paid by the County's General Fund.
- (2) Current Employees, employed by Mendocino County before September 1, 1998 with a minimum of ten (10) years services with Mendocino County will be eligible for the same benefits and limitations as enumerated above for current Retirees.

- (3) Reciprocal Agreement Members must have served the last 10 years prior to retirement with Mendocino County to be eligible for the full health insurance coverage enumerated above. Reciprocal Agreement Members with less than 10 years of service with Mendocino County may apply for health insurance coverage provided the member has at least 55% of total service with Mendocino County and has served that time with the County immediately prior to retirement. The cost of monthly premiums is as follows:

YEARS OF SERVICE WITH MENDOCINO CO.	PERCENTAGE RETIREMENT SYSTEM PAYS	PERCENTAGE RETIREE PAYS
From 9 to 10	80%	20%
From 8 to 9	60%	40%
From 7 to 8	40%	60%
From 6 to 7	20%	80%
Less than 6	-0-	100%

- (4) Service Connected Disability Retirement recipients will be eligible for the same benefits and limitations as enumerated above for current retirees and current employees, with no minimum years of service required for eligibility.
- (5) Non Service Connected Disability Retirement recipients are eligible for Health Insurance coverage as outlined in Section (3) above. The number of years of service required for full health insurance coverage is the same as the requirements for reciprocal employees
- (6) Present Employees who retire with less than 10 years of service with Mendocino County will receive no health insurance benefits.
- (7) Future Employees, hired by the county after September 1, 1998, will receive no retirement system health insurance benefits.
- (8) Enrollment of a Retiree's dependent in the health insurance program requires the dependent to have been covered by the Mendocino County's current health insurance plan for the period of six months, or more. If the dependent has not been covered by the Mendocino County current health insurance plan, a statement of health will be required before participation and coverage may be underwritten. Dependent coverage, in all cases, will be paid for by the Retiree or his or her beneficiary.

The cost associated with providing health insurance coverage for the current configuration of retirees for Fiscal Year 1998-99 is estimated to be between \$1,078,000 (expected cost) and \$1,379,000 (maximum cost). Because the retirement system is enrolled in a partially self funded health insurance program the total actual cost of providing coverage will not be known until the end of the fiscal year. At the present time sufficient excess earnings exist within the retirement fund to provide coverage for approximately three to five years.

THEREFORE, BE IT RESOLVED that effective immediately Government Code Section 31592.4 is hereby adopted and shall be applicable to the County of Mendocino Employees Retirement Association.


BE IT FURTHER RESOLVED that the enclosed Governing Rules are hereby adopted and shall be applicable to the County of Mendocino employees Retirement Association.


The above and foregoing resolution was introduced by Supervisor Shoemaker, who moved for its adoption, seconded by Supervisor Peterson, and passed and adopted this 25th day of August, 1998, by the following vote on roll call:

Ayes: Supervisors Delbar, Shoemaker, Campbell, Peterson, Pinches
Noes: None
Absent: None

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

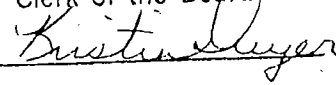
ATTEST: JOYCE A. BEARD
Clerk of the Board


JOHN PINCHES, CHAIRMAN



I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

JOYCE A. BEARD
Clerk of the Board

By: 
DEPUTY

CALIFORNIA CONSTITUTION

ARTICLE XVI, SECTION 17

CALIFORNIA CONSTITUTION
ARTICLE 16 PUBLIC FINANCE

SEC. 17. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.

Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system, subject to all of the following:

(a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

(b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

(c) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The members of the retirement board of a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(e) The retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

(f) With regard to the retirement board of a public pension or

retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

(g) The Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section.

(h) As used in this section, the term "retirement board" shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system; provided, however, that the term "retirement board" shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees' pension or retirement system. .

**TRUST
&
CUSTODIAL AGREEMENT**

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

CERL § 31588 provides that the funds of the retirement system must be held in trust. Section 31588 also requires the retirement fund to be a trust fund created, continued and administered solely for the benefit of members and their beneficiaries.

CUSTODY AGREEMENT

No. 197206930

MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION, hereinafter called "MCERA", hereby employs SECURITY PACIFIC NATIONAL BANK, a national banking association, in its capacity as custodian, hereinafter called "CUSTODIAN", to provide the services hereafter set forth with respect to the property described in the attached Schedule of Assets and such other property as is from time to time held hereunder.

1. Custodial Services. CUSTODIAN shall safekeep all property ("principal") delivered to it, shall identify such property on its books and records as property of MCERA, shall receive the income attributable thereto, and shall hold, invest, disburse or otherwise dispose of such income and principal, or its proceeds, pursuant to the provisions of this Agreement.

2. Responsibility for Assets. CUSTODIAN shall be responsible for losses of or damage to the securities under its care, custody and control or under the care, custody and control of its nominee, its agents or a depository selected by it, including but not limited to losses due to burglary, robbery, fire, theft or mysterious disappearance. In the event of loss of or damage to the securities under the care, custody and control of CUSTODIAN or its nominee, a depository or other agent of CUSTODIAN, CUSTODIAN shall, upon demand by MCERA, promptly replace such securities with like kind and quality together with all rights and privileges pertaining to such securities or, if acceptable to MCERA, deliver cash equal to the then fair market value of the securities. Under no circumstances, however, shall CUSTODIAN be liable for causes beyond its control, which causes shall be war, insurrection, nuclear fission or fusion, radioactivity, seismic activity, earth movement, volcanism, flood, windstorm, hurricane, tornado or lighting, acts of nature.

3. Indemnification. CUSTODIAN shall indemnify, hold harmless and defend MCERA, its agents and employees from any and all action, claims, damages, costs or expenses which may be asserted by any person arising out of any act or omission of the CUSTODIAN in the performance of this Agreement.

4. Investment Services.

4.1 Except for cash management as provided in paragraph 5 below, CUSTODIAN shall have no responsibilities with respect to the investment and reinvestment of the property held by it under this Agreement.

4.2 All sales, purchases, exchanges or other transactions respecting securities or other property which may be made by CUSTODIAN for the account of MCERA shall be made only pursuant to instructions of MCERA or of their designated representative. Absent such instructions, CUSTODIAN shall have no responsibility for the investment or the reinvestment of such property nor liability for any omission to act in the absence of such instructions.

4.3 If an acquisition initiated by MCERA or MCERA's representative results in a debit balance at settlement of such transaction, CUSTODIAN shall be entitled to charge interest on such debit balance at Security Pacific National Bank's existing prime rate.

4.4 MCERA shall be responsible for all money, securities or other property paid or delivered to any broker or other person specified by MCERA in such manner as MCERA may direct.

4.5 CUSTODIAN's duties hereunder shall continue until such time as such duties shall terminate as hereinafter provided or until such time as such duties shall be altered by a writing, executed by MCERA and consented to by CUSTODIAN.

5. Cash Management. In addition to the instructions contained in this Agreement, CUSTODIAN shall invest and reinvest any available cash in units of such of the Pacific Horizon money market portfolios ("the Fund") as MCERA may select, and redeem units of said Fund to meet the cash requirements of MCERA's Account.

5.1 MCERA acknowledges that CUSTODIAN shall be compensated by the Fund for services rendered in its capacity as Investment Advisor and sub-Custodian for the Fund and that the Fund may purchase securities from or through CUSTODIAN, may engage in repurchase transactions with CUSTODIAN, and may place funds on deposit in accounts with CUSTODIAN subject to receipt of interest income at currently available market rates.

5.2 MCERA assumes the obligation and retains the right to vote all units of the Fund held by CUSTODIAN for the benefit of MCERA's Account.

5.3 CUSTODIAN shall forward, in a timely manner, all proxies and other shareholder materials and communications relating to units in the Fund to MCERA.

5.4 Transactions in the Fund will be reported only in CUSTODIAN's regular monthly accounting.

5.5 CUSTODIAN shall maintain an inventory of the securities held in the Account and shall provide a listing of securities on a monthly basis. Such reports shall contain as a minimum: description of security, par value of security, coupon, maturity date, book value and market value, and cost.

5.6 CUSTODIAN shall provide a monthly report of cash receipts and disbursements for the Account showing date received and date credited to Account.

6. Fractional Shares. CUSTODIAN is directed to sell all fractional shares received by it unless it is notified otherwise.

7. Capital Changes. It shall be the responsibility of MCERA or its Investment Managers to furnish CUSTODIAN with notification of the declaration, record and payment dates of any dividends or other distributions and of any calls or other capital changes or information requiring special action concerning each of the securities subject to this Agreement whenever such information is not readily available from reporting services or publications generally accepted and utilized by the securities industry. CUSTODIAN will have no responsibility to determine the existence of any such information which is published or otherwise made available prior to CUSTODIAN assuming custodial responsibility for a security.

If any securities registered in the name of CUSTODIAN's nominee or held in a central depository and registered in the name of the depository's nominee are called for partial redemption by the issuer of such securities, CUSTODIAN is authorized to allot the called portion to the respective beneficial holders of the securities in any manner deemed to be fair and equitable by CUSTODIAN in its sole discretion.

8. Nominee Authorized. CUSTODIAN is directed to transfer into the name of nominees selected by it all registered securities from time to time held under this Agreement. CUSTODIAN shall be responsible for the acts of its nominee with respect to such securities.

To effect the transfer of registered securities into the name of CUSTODIAN's nominee, to facilitate the collection of any payment thereon and to effect any other action in relation thereto or in order to meet any requirements thereof, MCERA authorizes CUSTODIAN to execute in MCERA's name, and to deliver, any instrument determined by CUSTODIAN to be appropriate in furtherance of the purposes hereof, and to guarantee in CUSTODIAN's name as the signature of MCERA any signature so placed on such instrument.

9. Directions to CUSTODIAN. All directions of MCERA to CUSTODIAN shall be in writing or will be confirmed by a report from the DTC ID ("Depository Trust Company Identification") or comparable system and may be given by such person or persons as MCERA shall, by appropriate resolution of its governing body, designate for that purpose. CUSTODIAN shall not be required to comply with any direction of MCERA which in its judgement may subject it to liability or expense, or to prosecute or defend any action, unless indemnified in manner and amount satisfactory to it. It is understood that DTC ID ("Depository Trust Company Identification") is CUSTODIAN's designation for its nationwide computer system that allows a broker or investment manager to initiate, confirm, and verify investment transactions.

10. Proxies. CUSTODIAN shall not vote proxies. All proxies shall be forwarded to MCERA.

11. Distributions. CUSTODIAN shall either reinvest net income or distribute it as MCERA may direct from time to time. In addition, CUSTODIAN shall distribute principal cash or principal assets as MCERA may direct from time to time. In the event that MCERA issues a direction to distribute an asset that is inconsistent with a prior settlement instruction CUSTODIAN may retain the asset until settlement has been made.

12. Statements. CUSTODIAN shall furnish monthly statements in the usual form for accounts of this type and shall deliver the same to MCERA or MCERA's designated representative.

13. Termination of Agreement. This agreement may be terminated at any time by MCERA or CUSTODIAN upon written notice to the other. Upon termination CUSTODIAN shall deliver to MCERA the property then held in the account for MCERA, including such property which has been deposited by CUSTODIAN with a Depository. Upon written direction of MCERA, CUSTODIAN shall effect transfer of securities deposited by it on behalf of MCERA with the Depository to the new custodian, along with all records pertaining to the securities (with a copy of the records to MCERA). Upon termination, MCERA shall pay all sums due CUSTODIAN and shall indemnify CUSTODIAN in the manner and amount satisfactory to it against all liabilities incurred in the performance of this Agreement.

14. Compensation. All charges, including, but not limited to broker's commissions, resulting from security transactions shall be paid by MCERA. Except as hereafter provided, CUSTODIAN shall receive compensation for its services in the amount specified in CUSTODIAN's Schedule of Fees and Charges as follows:

(CUSTODIAN's policy is to bill for fees quarterly in arrears. The fees are separated into two categories; administration and activity.)

ADMINISTRATION

<u>Market Value</u>	<u>Fee/Thousand</u>
\$0 - \$100 million	\$.20/\$1,000

Includes:

- Conversion, excluding out-of-pocket (i.e., Brink's) expenses
- All Administration
- All Income Collection
- All Monthly Reports
- Cash Management Sweep Account
- Any Segregated Accounts

ACTIVITY

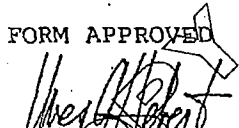
Security Transactions (Buys, Sells, Maturities)	\$20.00 each
Outgoing Fed Wire	\$15.00 each

The above compensation may be adjusted from time to time as mutually agreed in writing by the parties hereto.


EXECUTED IN TRIPLICATE AT Ukiah

California, on the 29th day of September, 1987.

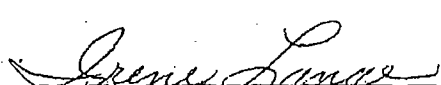
FORM APPROVED


MENDOCINO COUNTY COUNSEL

APPROVED:


Charles Boyer, Chairman
BOARD OF DIRECTORS
MENDOCINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

MENDOCINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION


Irene Lange, Treasurer
COUNTY OF MENDOCINO

SECURITY PACIFIC NATIONAL BANK



Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

The California County Employees' Retirement Law ("CERL" or the "37 Act") is embedded in the California Government Code, §§ 31450-31899.10. It is enacted by the legislature with the approval of the Governor, as is any legislation. The CERL is the statutory basis for the retirement plan benefits for the system. Since each amendment to the CERL is made through enacted legislation, it would be extremely difficult to provide documentation of each amendment in the traditional format and are too numerous to provide separately. Documentation of all amendments to the CERL can be found in the annotations to each plan section of the enclosed volume of Deering's Annotated Code.

C

APPENDIX C
VCP CHECKLIST

Plan Name: Mendocino County Employees' Retirement Association EIN: 94-6116617 Plan #: 001

INSTRUCTIONS

NOTE: If you are submitting a Streamlined Application under VCP using Appendix F in accordance with section 11.02 of this revenue procedure, this Appendix C does not need to be completed. If you are submitting a VCP submission using Appendix D, then Part I of this Appendix C does not need to be completed.

The Service will be able to respond more quickly to your VCP request if it is carefully prepared and complete. To ensure that your request is in order, use this checklist. *Sign and date the checklist (as plan sponsor or authorized representative) and include it in the submission as provided in section 11.10 of Rev. Proc. 2008-50.* (Hereafter, all section references are to Rev. Proc. 2008-50)

You must submit a completed copy of this checklist with your request. If a completed checklist is not submitted with your request, substantive consideration of your submission will be deferred until a completed checklist is received.

PART I – PLAN INFORMATION

1. APPLICANT'S NAME Board of Retirement of Mendocino County Employees' Retirement Association
2. APPLICANT'S ADDRESS
625B Kings Court, Ukiah, CA 95482
3. APPLICANT'S TELEPHONE NO. 707-463-4328 4. FAX NO. 707-467-6472
(optional) (optional)
5. APPLICANT'S EIN 94-6116617 6. PLAN NO. 001
(do not use a Social Security Number)
7. PLAN NAME Mendocino County Employees' Retirement Association
8. TYPE OF SUBMISSION

<input checked="checked" type="checkbox"/>	REGULAR SUBMISSION
<input type="checkbox"/>	REGULAR SUBMISSION — ANONYMOUS
<input type="checkbox"/>	REGULAR SUBMISSION — MULTI-EMPLOYER PLAN
<input type="checkbox"/>	REGULAR SUBMISSION — MULTIPLE EMPLOYER PLAN
<input type="checkbox"/>	GROUP SUBMISSION

9. TYPE OF PLAN (CHECK ONE ONLY):

<input type="checkbox"/>	01	PROFIT SHARING	<input type="checkbox"/>	09	CASH BALANCE
<input type="checkbox"/>	02	401(k)	<input checked="" type="checkbox"/>	10	GOVERNMENTAL PLAN (§ 414(d))
<input type="checkbox"/>	03	MONEY PURCHASE	<input type="checkbox"/>	11	SEP
<input type="checkbox"/>	04	DEFINED BENEFIT	<input type="checkbox"/>	12	SARSEP
<input type="checkbox"/>	05	ESOP	<input type="checkbox"/>	13	SIMPLE
<input type="checkbox"/>	06	TARGET BENEFIT	<input type="checkbox"/>	14	STOCK BONUS
<input type="checkbox"/>	07	403(b)	<input type="checkbox"/>	15	KSOP
<input type="checkbox"/>	08	457	<input type="checkbox"/>	16	OTHER (specify):

10. DATE (month and day) ON WHICH PLAN YEAR ENDS 12/31

11. NUMBER OF PARTICIPANTS IN THE PLAN AS PROVIDED ON THE MOST RECENTLY FILED FORM 5500 SERIES (See Rev. Proc. 2008-50, section 12.07.): 2613

12. ASSETS IN THE PLAN AS PROVIDED ON THE MOST RECENTLY FILED FORM 5500 SERIES (ROUND TO NEAREST DOLLAR): \$ 304,209,225

See Rev. Proc. 2008-50, section 12.07.

If the Applicant is being represented by someone in connection with this matter or wishes to authorize someone to receive information from us in connection with this matter, submit a completed Form 2848 or Form 8821 and complete items 13 through 18.

13. NAME OF APPLICANT'S REPRESENTATIVE Judith W. Boyette

14. NAME OF REPRESENTATIVE'S FIRM (if applicable)
Hanson Bridgett, LLP

15. REPRESENTATIVE'S ADDRESS
425 Market Street, 26th Floor, San Francisco, CA 94105

16. REPRESENTATIVE'S PHONE NO. 415-995-5115 17. FAX NO. 415-995-3577

18. REPRESENTATIVE'S E-MAIL ADDRESS jboyette@hansonbridgett.com
(optional)

PART II – SUBMISSION REQUIREMENTS
Answer each question by answering “Yes” or “N/A” as appropriate

Yes	N/A	Question	Reference (Rev. Proc. section)
✓		1. Have you included an explanation of how and why the failure(s) arose, including a description of the applicable administrative procedures for the plan in effect at the time the failure(s) occurred?	11.03(6)

Yes	N/A	Question	Reference (Rev. Proc. section)
✓		2. Have you included a detailed description of the method for correcting the failure(s) identified in your submission? This description must include, for example, the number of employees affected and the expected cost of correction (both of which may be approximated if the exact number cannot be determined at the time of the request), the years involved, and calculations or assumptions the Plan Sponsor used to determine the amounts needed for correction. Note that each step of the correction method must be described in narrative form.	11.03(7)
	✓	3. If you are requesting that participant loans being corrected under this revenue procedure not be treated as distributions pursuant to § 72(p), have you included the request and a detailed description of the failure? Alternatively, if you are requesting that participant loans being corrected under this revenue procedure be recognized as distributions in the year of correction instead of the year that the deemed distribution occurred under § 72(p), have you included the request and a detailed description of the failure?	11.03(13)
	✓	4. Have you described the earnings or interest methodology (indicating computation period and basis for determining earnings or interest rates) that will be used to calculate earnings or interest on any corrective contributions or distributions? (As a general rule, the interest rate (or rates) earned by the plan during the applicable period(s) should be used in determining the earnings for corrective contributions or distributions.)	11.03(8)
	✓	5. Have you submitted specific calculations for either all affected employees or a representative sample of affected employees? In lieu of providing correction calculations with respect to each employee affected by a failure, you may submit calculations with respect to a representative sample of affected employees. However, the representative sample calculations must be sufficient to demonstrate each aspect of the correction method proposed.	11.03(9)
✓		6. If you are requesting a waiver of the excise tax under § 4974 of the Code, have you included the request, and, if applicable, an explanation supporting the request for any affected owner-employee or 10 percent owner?	11.03(12)
	✓	7. If you are requesting relief of the excise tax under §§ 4972, 4973, or 4979, have you included the request and a detailed description of the failure?	11.03(12)
✓		8. Have you described the method that will be used to locate and notify former employees or, if there are no former employees affected by the failure(s) or the correction(s), provided an affirmative statement to that effect?	11.03(10)
✓		9. Have you provided a description of the administrative measures that have been or will be implemented to ensure that the same failure(s) do not recur?	11.03(11)
✓		10. Have you included a statement that, to the best of the Plan Sponsor's knowledge, the plan is not currently under an Employee Plans examination?	11.03(14)
✓		11. Have you included a statement that, to the best of the Plan Sponsor's knowledge, the Plan Sponsor is not under an Exempt Organizations examination?	11.03(14)
✓		12. Have you included a statement that neither the plan nor the Plan Sponsor has been a party to an abusive tax avoidance transaction? Alternatively, have you provided a statement identifying the abusive tax avoidance transaction(s) to which the plan or the Plan Sponsor has been a party?	11.03(15)

Yes	N/A	Question	Reference (Rev. Proc. section)
	✓	13. If the submission includes a failure related to Transferred Assets, have you included a description of the related employer transaction, including the date of the employer transaction and the date the assets were transferred to the plan?	11.03(16)
✓		14. Have you included a copy of the portions of the plan document (and adoption agreement, if applicable) relevant to the failure(s) and method(s) of correction?	11.04(1)
✓		15. Have you included the original signature of the sponsor or the sponsor's authorized representative?	11.07
✓		16. Have you included a <i>Power of Attorney</i> (Form 2848) or <i>Tax Information Authorization</i> (Form 8821)? Note: Authorization to represent a plan sponsor before the Service using Form 2848 is limited to attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.	11.08
✓		17. Have you included a Penalty of Perjury Statement signed (original signature only) and dated by the Plan Sponsor?	11.09
✓		18. Have you submitted the Appendix E acknowledgement letter?	11.12
✓		19. Where applicable, have you submitted an application for a determination letter and Form 8717 together with a check for the user fee made payable to the U.S. Treasury?	10.05 and 11.04(2)
	✓	20. If the plan is currently being considered in an unrelated determination letter application, have you included a statement to that effect?	11.03(17)
✓		21. Have you included a check for the VCP compliance fee, and, if applicable, a separate check for the determination letter fee, each made payable to the U. S. Treasury?	11.04 and 11.05
	✓	22. If your submission is for a terminating Orphan Plan, have you included a request for a waiver of the VCP fee?	11.03(22)
✓		23. Have you assembled your submission as described in section 11.15?	11.15

If you inserted "N/A" for any item, enter an explanation here:

Item 3 is N/A because none of the failures related to participant loans. Item 4 is N/A because none of the failures require earnings or interest adjustments.

Item 5 is N/A because none of failures require any type of calculation. Item 7 is N/A because we are not requesting a waiver of penalties under the sections described.

Item 13 is N/A because the failures described in the VCP do not relate to a transferred assets.

Item 20 is N/A because the plan is not currently being considered in an unrelated determination letter application.

Item 22 is N/A because the VCP does not relate to a terminating orphan plan.

James Andersen

Signature
Administrator

1/17/2011
Date

Title or Authority
James Andersen

Typed or printed name of person signing checklist

D

**APPENDIX E
ACKNOWLEDGEMENT LETTER**

Judith W. Boyette
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Applicant's Name: Board of Retirement of the Mendocino County
Employees' Retirement Association

Plan Name: Mendocino County Employees' Retirement
Association
[Insert plan name]

Plan No.: 001
[Insert plan number]

Control No.:

(to be completed by IRS)

Received Date:

(to be completed by IRS)

The Internal Revenue Service, Employee Plans Voluntary Compliance, has received your VCP submission for the above-captioned plan. Your request has been assigned the control number listed above. This number should be referred to in any communication to us concerning your submission.

You will be contacted when the case is assigned to an agent. If you need to inquire about the status of your case prior to that date, please call (626) 312-4921 (not a toll-free number). Please leave a message with the name of the plan, the Control Number, your name, and a phone number where you can be reached.

Thank you.

E

**Power of Attorney
and Declaration of Representative**

► Type or print. ► See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date ____/____/____

Part I Power of Attorney**Caution:** Form 2848 will not be honored for any purpose other than representation before the IRS.**1 Taxpayer information.** Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address

Board of Retirement of Mendocino County

Employees' Retirement Association (MCERA)

625B Kings Court

Ukiah, CA 95482

Social security number(s)

Employer identification
number

94-6116617

Daytime telephone number

Plan number (if applicable)

707-463-4328

001

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

Judith W. Boyette

Hanson Bridgett LLP

425 Market Street, 26th FL, San Francisco CA 94105

CAF No. 9005-09391R

Telephone No. 415-995-5115

Fax No. 415-995-3577

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address

Robert A. Blum

Hanson Bridgett LLP

425 Market Street, 26th FL, San Francisco CA 94105

CAF No. 0305-77601R

Telephone No. 415-995-5830

Fax No. 415-995-3445

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address

Nancy Hilu

Hanson Bridgett LLP

425 Market Street, 26th FL, San Francisco CA 94105

CAF No. 0306-20475R

Telephone No. 415-995-5067

Fax No. 415-995-3436

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Determination letter application and	All forms/ matters related to	N/A
VCP filing for the Orange County Employees' Retirement Association	the VCP and determination letter submissions	

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Uses Not Recorded on CAF** ☐**5 Acts authorized.** The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative or add additional representatives, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 1 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan administrator may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (levels k and l) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ► _____

For Privacy Act and Paperwork Reduction Act Notice, see page 4 of the instructions.

Form **2848** (Rev. 6-2008)

7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.

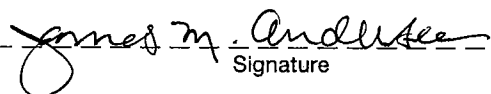
- a If you also want the second representative listed to receive a copy of notices and communications, check this box ☐
 b If you do not want any notices or communications sent to your representative(s), check this box ☐

8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here. ☐

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.


 Signature _____ Date 1/17/2011 Title (if applicable) Administrator
 James M. Andersen _____ PIN Number _____ Board of Retirement of MCERA
 Print Name _____ Print name of taxpayer from line 1 if other than individual

_____ Signature _____ Date _____ Title (if applicable) _____
 _____ Print Name _____ PIN Number _____

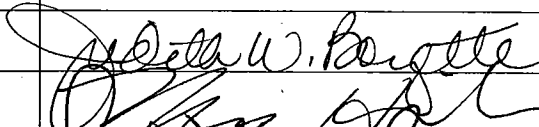
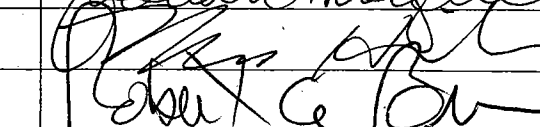
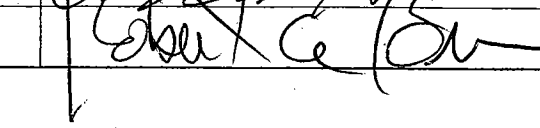
Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program (levels k and l), see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (for example, spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Circular 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See **Unenrolled Return Preparer** on page 1 of the instructions.
 - k Student Attorney—student who receives permission to practice before the IRS by virtue of their status as a law student under section 10.7(d) of Circular 230.
 - l Student CPA—student who receives permission to practice before the IRS by virtue of their status as a CPA student under section 10.7(d) of Circular 230.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation—Insert above letter (a–r)	Jurisdiction (state) or identification	Signature	Date
a	CA		1/26/11
a	CA		1/26/2011
a	CA		

F

**Internal Revenue Service
District Director**

Department of the Treasury

P O BOX 36001 STOP SF-4-4-46
SAN FRANCISCO, CA 94102

Date: **4 AUG 1987**

COUNTY OF MENDOCINO
COUNTY COURTHOUSE ROOM 108
UKIAH, CA 95482-0000

Employer Identification Number:
94-6000520
File Folder Number:
680004306
Person to Contact:
MICHAEL ONG
Contact Telephone Number:
(415) 556-0153
Plan Name:
MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION
Plan Number: 001

Dear Applicant:

Based on the information supplied, we have made a favorable determination on your application identified above. Please keep this letter in your permanent records.

Continued qualification of the plan will depend on its effect in operation under its present form. (See section 1.401-1(b)(3) of the Income Tax Regulations.) The status of the plan in operation will be reviewed periodically.

The enclosed document describes some events that could occur after you receive this letter that would automatically nullify it without specific notice from us. The document also explains how operation of the plan may affect a favorable determination letter, and contains information about filing requirements.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other Federal or local statutes.

We have sent a copy of this letter to your representative as indicated in the power of attorney.

This determination letter is applicable for the amendment(s) adopted on May 11, 1983.

This determination letter is applicable for the plan adopted on Feb. 9, 1973.



Letter 835 (DD/CG)

COUNTY OF MENDOCINO

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Frederick C. Nielsen". The signature is written in a cursive style with a horizontal line underneath.

Frederick C. Nielsen
District Director

Enclosures:
Publication 794
OPWBP 515

COUNTY OF MENDOCINO

This determination does not apply beginning with any year in which the IRC 415 limits are exceeded in operation.

G

**TAX COMPLIANCE
COUNTY EMPLOYEES RETIREMENT LAW**

**MENDOCINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION**

**TAX COMPLIANCE
COUNTY EMPLOYEES RETIREMENT LAW
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

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TAX COMPLIANCE - CERL

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")

This chart summarizes, to the best of our knowledge, the Internal Revenue Code requirements for qualified plans and the associated sections of the California County Employees' Retirement Law ("CERL"). We believe it will be helpful both for the Mendocino County Employees' Retirement Association ("MCERA") VCP application and the determination letter application.

Where there are compliance issues, we have identified them and referred to the corresponding item in the VCP filing made by the MCERA simultaneously with the application for a determination letter. To the extent that MCERA has specific issues that are different from those presented by the CERL, they are set out in supplemental materials.

Not all of the CERL has been adopted by MCERA. This chart summarizes all of the CERL provisions in relation to the Code. Where a CERL provision does not apply to MCERA, we have identified that in the chart for the convenience of the reviewer. Where one provision applies to MCERA from among a number that are provided by the CERL – for example with respect to the particular benefit formula that has been adopted for MCERA – this has been identified in this chart. Where the chart states that a section of the CERL does not apply to MCERA the reason is that this is an optional provision and it has not been adopted by the board of supervisors or board of retirement, as applicable. In some situations the CERL is unclear on whether it complies with the qualification rules. These CERL sections are identified and reference is made to the part of the VCP application that resolves this issue for the CERL and when MCERA operations have complied with the qualification rules this has also been stated.

No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
A.	<u>IRC §401(a)</u>				
A.1	<u>Procedural Requirements.</u> To constitute a qualified plan a system must meet the following requirements:				
A.1.a	<u>Written program.</u> The plan must be a definite written program. Treas. Reg. §1.401-1(a)(2).	§ 31450 et seq. (CERL)	Section 31450 et seq. provides a written program.	Yes	

¹ The CERL or '37 Act means the California County Employees' Retirement Law of 1937, which is in California Government Code sections 31450 through 31899.10.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		§ 31476 (Creation)	Section 31476 states that a retirement system is created and established pursuant to the CERL.	Yes	
A.1.b	<u>Established and Maintained by Employer.</u> The plan must be established and maintained by an employer for employees. Treas. Reg. §1.401-1(a)(2).	§ 31500 (Established)	Section 31500 provides that the system is established by ordinance by the electors or the BOS ² accepting the CERL.	Yes	County Ordinance 310 establishes the retirement system.
		§ 31550 (Organized)	Section 31550 states that the system "shall be organized" when the CERL becomes operative in a county.	Yes	
		§§ 31525, 31527 (Regulations)	Section 31525 permits the BOR ³ to adopt regulations that are consistent with the CERL. The BOS must approve regulations.	Yes	

² "BOS" means the Board of Supervisors, which is the elected governing body of each California County.

³ "BOR" means the Board of Retirement, which is the governing body of the retirement system under the CERL. The BOR has 9 members, of which 4 are elected by the membership, 4 are appointed by the BOS, and 1 is elected by the County voters (who is the County Treasurer). The system is an independent agency with the "plenary authority" to administer the system and invest the assets, as provided by the California Constitution, Article XVI, section 17.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		§ 31502 (District)	Section 31502 provides that the CERL is made effective for a district ⁴ by resolution of the district's governing board.	Yes	<p>Districts that participate in MCERA are:</p> <ul style="list-style-type: none"> • Cemetery District of the Redwoods • County of Mendocino • Mendocino County Employees' Retirement Association ("MCERA") • Willits Cemetery District <p>See Tab S of submission.</p>

⁴ Local public agencies, such as a fire protection district, may elect to join a '37 Act system. Also county courts are treated as districts under the CERL and may participate in their County's '37 Act system for their non-judicial employees. However, the Courts may elect to move to CalPERS. Many '37 Act systems are "multiple employer plans." Because of the collective bargaining involved, the systems could also be viewed as "multi-employer plans."

TAX COMPLIANCE - CERL MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")

No.	Code Requirements	CERL ⁵ Sec.	Sec. Description	Comply?	MCERA Comments
		§§ 31469 et. seq. (Employee)	Sections 31469 et seq. define employee of a county, districts, and the courts and defines certain safety employees.	Yes	Sections 31469.3, 31469.5 and 31469.6 do not apply to MCERA. All other sections apply.
		§§ 31469.3 and 31470 (Member)	Sections 31469.3 and 31470 define safety ⁵ member and "member" generally.	Yes	Sections 31470 applies to MCERA.
		§§ 31470.3 thru 31470.14 (Eligibility)	Sections 31470.3 thru 31470.14 describe persons ineligible and also eligible for particular benefits.	Yes	Section 31470.6 does not apply to MCERA.
		§§ 31469.3, 31469.4, 31469.5 and 31469.6. (Safety member)	Sections 31469.3, 31469.4, 31469.5 and 31469.6 define safety member.	Yes	Section 31469.4 applies to MCERA.
		§ 31468 (District)	Section 31468 defines "district," which is an employer under the CERL, to include certain nonprofit corporations, commissions, and associations.	Yes for MCERA Unclear for some systems	MCERA does not have any participating employers that are nonprofit corporations, commissions, or associations.

⁵ The CERL provides different benefits for safety and all others members (called "general members"). A "member" is a participant. Safety members are generally those members who provide police and fire protection. The safety class of membership is established by CERL sections 31469.3 through 31470.14.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		<p>§§ 31551 through 31554, and §§ 31556 and 31557 (Eligibility of employees to participate)</p>	<p>Sections 31551 through 31567 define which employees are eligible to participate.</p>	Yes	
A.1.c	<p><u>Communicated.</u></p> <p>Plan must be communicated to employees. Treas. Reg. §1.401-1(a)(2).</p>	<p>§ 31649.1 (Notice of right to purchase service credit on reemployment)</p>	<p>Actions of the BOS and BOR are public and part of the public record. Also, to meet their fiduciary duty, all systems have substantial communications to members about their benefits.</p>	Yes	<p>MCERA provides summary plan descriptions, a website and other plan materials to its employees.</p>
A.1.d	<p><u>Domestic Trust.</u></p> <p>The trust must be created or organized in the United States and must be maintained at all times as a domestic trust. Treas. Reg. §1.401-1(a)(3)(i).</p>	<p>§§ 31588, 31595.1 (Trust fund account)</p>	<p>The BOR is the Trustee. Also, under section 31588, a trust fund account is opened on the books of the BOR, or County Treasurer or Auditor if authorized by the BOR. This trust fund must be created, continued, and administered solely for the benefit of members and their beneficiaries.</p>	Yes	

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		§ 31596 (Custodial account)	Section 31596 authorizes the use of custodial accounts.	Yes	Signed Custodial Agreement enclosed at Tab B.6 of submission.
A.1.e	<p><u>Permanency.</u></p> <p>Abandonment of the plan within a few years after taking effect for any reason other than business necessity is evidence that the plan from its inception was not a bona fide program for exclusive benefit of employees. Treas. Reg. §1.401-1(b)(2).</p>	<p>We know of no provision in the CERL that allows a County to terminate or withdraw from a 37 Act system. Once the CERL is adopted by a county, a 37 Act system is established in perpetuity under the CERL. Districts may withdraw. However, California vested rights law requires that future accruals continue through another plan for persons employed before any withdrawal, for the rest of</p>	N/A	Yes	

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
A.2	<u>Pension Plan</u> A plan established and maintained by an employer primarily to provide systematically for the payment of:	their working lifetime with the District. See A.3 below.			
A.2.a	<u>Definitely determinable benefits for employer's employees.</u>	See A.5 below			
A.2.b	<u>Over a period of years, usually for life after retirement</u> Treas. Reg. §1.401-1(b)(1)(i).	§ 31664 et seq. (Safety Members) § 31676.01 et seq. (General Members) § 31760 et seq. (Optional Benefit Forms)	Sections 31664, 31676.01 and 31760 of the CERL provide the benefit formulas and optional benefit forms for general members and safety members. They provide lifetime benefits.	Yes	

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
A.3	<u>Distribution Restrictions</u> A pension plan may not permit distributions before the earliest of death, disability, reaching normal retirement age, severance from employment, or plan termination. Treas. Reg. § 1.401-1(b)(1)(i); Rev. Rul. 74-254.	§§ 31486.2, 31489, 31496.7, 31499.2 (Refunds)	Sections 31486.2, 31489, 31496.7 and 31499.2 permit the refund of pre-tax and post-tax member contributions to members who transfer to a specified alternative retirement plan. ⁶	Yes, for MCERA because no such transfers have occurred. Unclear for other systems.	Sections 31486.2, 31489, 31496.7 and 31499.2 do not apply to MCERA. For all '37 Act systems resolved by CERL VCP application item II.A.9. It is proposed to amend these CERL sections to limit refunds to comply with the tax qualification rules. The proposed amendment applies to each of the CERL sections noted in this section A.3.
		§ 31511.2 (Refunds)	Section 31511.2 does not permit a refund of contributions to a member who elects to transfer to the alternative retirement plan established by Article 2.6.	Yes for MCERA	Section 31511.2 does not apply to MCERA.

⁶ When reference is made to refund or withdrawal of contributions, unless otherwise indicated this refers to member contributions that are pre-tax and post-tax, or both.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		§ 31553 (Elective Officers)	Section 31553 permits elective officers to withdraw from the retirement system within 60 days of leaving office and receive a refund of their contributions without requiring that they terminate employment with the county or district.	Yes for MCERA Unclear for other systems	MCERA has not had any elective officials withdraw from the system and receive a refund of their plan contributions. The CERL presumes that an elected officer has terminated employment when he or she leaves office. In limited circumstances, this may not be correct. This issue is resolved in VCP application Item II.A.9.
		§§ 31564, 31565 (District Withdrawal)	Sections 31564 requires the refund of accumulated contributions to members when a district withdraws from the system and there are no existing retirees unless the district elects to transfer the funds to another public retirement system. Section 31565 permits the system to pay accumulated contributions to members employed by	Yes for MCERA Unclear for other systems	MCERA has not had any districts withdraw from the system. Under §§ 31564 and 31565, a district can terminate participation in the 37 Act system covering employees of the withdrawing district and the system can pay each member his or her contributions. Sections 31564 and 31565 do not require

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
			a district upon withdrawal of the district from the system.		plan termination for the return of contributions. This issue is resolved for the CERL by VCP application item II.A.9.
		§ 31627.2 (Withdrawal)	Section 31627.2 requires that supplemental member contributions under section 31627 (additional benefits established by regulation) be distributed within 90 days after the member's election with no restriction on in-service distributions.	Yes for MCERA Unclear for other systems	Section 31627.2 does not apply to MCERA. To avoid future issues, resolved by VCP application item II.A.9.
		§ 31700 (withdrawal)	Section 31700 requires that contributions remain in the system if system coverage ends without termination of employment.	Yes	
		§ 31641.45 (Refund Public Service)	Section 31641.45 requires the system to refund deposits for public service credit under section 31641.1 to a member when the member otherwise becomes eligible for this service; 31641.45 does not indicate when the refund is	N/A for MCERA	To MCERA's knowledge, they have never refunded deposits for public service credit under § 31641.45. Resolved by VCP application item II.A.9.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
			made.		
		§ 31653 (military Service)	Section 31653 allows the system to refund member contributions during military service if the county or district elects to contribute to the system on behalf of the member for that military service.	Unclear, because military service could involve a separation.	Resolved by VCP application Item II.A.9.
		§ 31680.1 (judges)	Section 31680.1 permits payment of benefits to a retired member serving temporarily as a judge.	Yes for MCERA Unclear for other systems	To MCERA's knowledge, benefits have not been made to a retired member serving as a temporary judge. Payment of retirement benefits to a member who continues to perform services for the court, even in a temporary capacity, could violate the Code's prohibition against in-service distributions before normal retirement age because a temporary assignment might prevent a separation from employment.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
					This is a facts and circumstances issue. Resolved by VCP application item II.A.9.
		<p>§§ 31680.2, 31680.3, 31680.4, 31680.5 (720 or 960 hour limits on re-employment of retired members without effect on their retirement income.)</p>	<p>Sections 31680.2 and 31680.3 permit a system to pay retirement benefits to a member who is employed for no more than 720 (or 960) hours.</p> <p>Sections 31680.4 and 31680.5 require a system to suspend retirement benefits upon a member's reemployment.</p>	<p>Unclear</p> <p>It is possible that part-time or temporary employment would not be after a separation from service and also not be after normal retirement age ("NRA").</p>	<p>Whether there is a separation is a matter of facts and circumstances. The VCP application provides guidance for this issue. See VCP application item II.A.9.</p> <p>Section 31680.3 does not apply to MCERA.</p> <p>MCERA requires a separation from employment before reemploying retirees in a temporary capacity. Retirees must be separated for at least the length of time equal to the hours of vacation time remaining on the payroll records at termination before returning to work.</p>

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
A.4	<p><u>Incidental Benefit Rules</u></p> <p>Death benefits under a pension plan must be incidental. Treas. Reg. §1.401-1(b)(1)(i). Generally, death benefits under a payment option are incidental if the plan provides that the present value of benefits to be paid to the participant is more than 50% of the present value of the total payments to be made to the participant and beneficiary. Rev. Rul. 72-241.</p>	§ 31485.14	<p>Section 31485.14 requires that all benefit distributions under a '37 Act system comply with the requirements of section 401(a)(9) of the Code, including the requirements relating to incidental death benefits.</p>	<p>Yes, effective as of January 1, 2009.</p> <p>However, because of vested rights rules this change can not adversely affect existing employees. The proposed model regulations are designed to meet both the qualification rules and Code § 401(a)(9).</p>	<p>Detailed model regulations under Code § 401(a)(9) are proposed in the VCP application Item II.A.2.</p>
A.5	<p><u>Benefits Must Be Definitely Determinable</u></p> <p>Benefits are definitely determinable only if they meet the following requirements: Treas. Reg. §1.401-1(b)(1).</p>				

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
A.5.a.	<p><u>Formula stated in plan.</u></p> <p>The benefits of each participant can be computed in accordance with an express formula contained in the plan.</p>	<p>§ 31664 et seq. (Safety member formulas)</p>	<p>The CERL provides a number of different benefits formulas that may be adopted by the County or a district for its employees. The formulas are based on three factors: compensation, years of service, and an "age factor."</p>	Yes	<p>Sections 31664 and 31664.2 apply to MCERA.</p> <p>See next item below.</p>
		<p>§ 31676.01 et seq. (General member formulas)</p>		Yes	<p>Sections 31676.11 and 31676.12 apply to MCERA.</p>
		<p>§§ 31460 et seq. (compensation)</p>	<p>Section 31460 et seq. defines compensation, compensation earnable and final compensation.</p>	Yes	<p>Sections 31462 and 31462.1 apply to MCERA.</p>
		<p>§ 31640 et seq. (service)</p>	<p>Sections 31640 et seq. defines service.</p>	Yes	<p>Sections 31641.01, 31640.02, 31641.05, 31641.20, 31641.95 and 31641.97 do not apply to MCERA. All other sections apply.</p>

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		§ 31463 et seq. (member contributions)	Member contributions are required by the CERL, but an employer may agree to pay for all or a portion of the member contributions. Section 31463 et seq. describes normal contributions, accumulated normal contributions, and accumulated additional contributions.	Yes	In accordance with various resolutions and MOUs, ⁷ the county and various participating employers pay a portion of the employee contribution pursuant to §§ 31581.1 and 31581.2.
		§ 31591 (interest crediting)	Section 31591 states that regular interest is credited to all contributions to the retirement fund, including member contributions.	Yes	
		§ 31592.3 (benefit increases)	Section 31592.3 authorizes the BOR to provide benefit increases from excess earnings.		Section 31592.3 applies to MCERA.

⁷ In California, employers and unions enter into MOU's (Memoranda of Understanding).

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
A.5.b.	<p><u>No Discretion.</u></p> <p>The benefits for each participant are determined in accordance with a stated formula that is not subject to the discretion of the employer. Rev. Rul. 74-385.</p>	<p>§§ 31453, 31454 (interest rate credited to member accounts)</p>	<p>Pursuant to §§ 31453 and 31454, the BOR recommends the interest rate to be credited to member accounts to the BOS. The BOS then adjusts the interest rates for member contributions in accordance with the recommendations. In districts that are not governed by the BOS, the BOR makes recommendations to the governing board of the district to set interest rates for member contributions.</p>	<p>Yes</p>	<p>The interest rate credited to member accounts is determined by an annual actuarial study adopted by the BOR and approved by the BOS.</p> <p>See Tab B.5 or BOS minutes adopting the credited interest rate.</p>
		<p>§§ 31486.35 and 31490.6 (Purchase of "Additional Retirement Credit" or "ARC" time)</p>	<p>Sections 31486.35 and 31490.6 describe how the BOR determines the charge for ARC time.</p>	<p>N/A to MCERA</p>	<p>Sections 31486.35 and 31490.6 do not apply to MCERA.</p>
		<p>§ 31499.14 (integration with OASDI)</p>	<p>Section 31499.14 requires the BOR to establish and adjust a table of estimated primary insurance amounts.</p>		<p>Section 31499.14 applies to MCERA.</p>

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		Article 5.5 ("Supplemental Retirement Benefit Reserve" or "SRBR")	The BOS and BOR together may elect to be governed by Article 5.5 which establishes the SRBR rules. Generally, under these rules half of any "excess earnings" of the system are credited to an SRBR account. The BOR may use these assets to provide supplemental benefits to retirees. Article 5.5 permits the BOR of SRBR systems to determine the type and amount of the SRBR benefit.	N/A to MCERA	Article 5.5 does not apply to MCERA.
		SS 31627, 31643, and 31644 (benefits)	The BOR and BOS can establish a program to provide benefits from supplemental member contributions and can also define "prior service."	N/A to MCERA	Sections 31627, 31643 and 31644 do not apply to MCERA.
		SS 31658, 31764 31764.5, 31764.6 and 31764.7 (additional retirement credit ("ARC") plus optional settlements)	Section 31658 provides that the member must make a contribution for ARC to the system equal to the amount the BOR and actuary determine is sufficient to not place any additional financial burden	Yes	These sections do not apply to MCERA.

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			on the system. Sections 31764, 31764.5, 31764.6, and 31764.7 provide that the BOR and the actuary must determine that any optional settlement will not place any additional burden on the system.		
		§ 31792 (death benefits)	Section 31792 authorizes the BOR to increase specified death benefits by 33-1/3% and to decrease specified death benefits by 20% by resolution.	Yes	This section does not apply to MCERA.
		§ 31874.3 (COLAs)	Section 31874.3 permits the BOR to determine the amount of certain cost of living adjustments.	Yes	MCERA provides a COLA under § 31874 codified in County Ordinance 71-747-A and 80-242. This is an automatic 3% COLA. See Tab B.5.
A.5.c	<u>Actuarial Assumptions Stated in Plan.</u> Whenever the amount of benefit in a defined benefit pension plan is to be determined by some procedure (such as calculating	§§ 31456 and 31611 (actuarial equivalent)	Section 31611 provides that the BOR recommends appropriate mortality tables to the BOS. Section 31456 provides that the BOS determines the mortality tables. Interest is	Yes	Clarified by VCP application Item II.A.9. Regular interest is the annual earnings of the system.

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	the actuarial equivalent) which requires the use of actuarial factors, the factors used must be set forth in the plan. Rev. Rul. 79-90. See also IRC § 401(a)(25) below.		"regular interest," which is interest determined by the BOR per 31472. The BOR is a nine member board of trustees that governs the retirement system independently of the employer. Four trustees are elected by MCERA members, four are appointed by the BOS; one is the elected county Treasurer. The BOR is governed by fiduciary rules that are the same as the fiduciary rules under ERISA. Therefore, there is no employer discretion in determining the interest rate.		Mortality tables in the actuarial report are adopted.
		§ 31777 (actuarial equivalent DROP)	The DROP provided in section 31777 requires that a benefit be "actuarially reduced" to reflect a lump sum payment. The factors for reduction are not stated.	N/A to MCERA	Section 31777 does not apply to MCERA. Clarified by VCP application Item II.A.9 for the CERL.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
B.	<p><u>IRC §401(a)(1)</u></p> <p>Contributions may be made only by employers and/or employees "for the purpose of distributing to such employees and their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan." IRC §401(a)(1).</p>	<p>§ 31656 (Union Employees)</p>	<p>Section 31656 permits Orange County Transit District to extend service credit to an employee who is on leave of absence to serve as a union official and permits the union to pay to the system the "total contributions" that would have been paid by the district if the employee were not on leave.</p>	<p>No</p>	<p>Section 31656 does not apply to MCERA.</p> <p>Resolved by VCP application Item II.A.9.</p>
		<p>§31685 (Domestic Relations Orders)</p>	<p>Section 31685 allows the alternate payee to redeposit and to purchase service credit.</p>	<p>N/A to MCERA</p>	<p>Section 31685 does not apply to MCERA.</p> <p>At the option of the BOR, beneficiaries and alternate payees pursuant to a domestic relations order are accorded the same rights as participants to reinstate previously lost benefits or to enhance benefits. No more can be obtained by the alternate payee than could be obtained by the member. This protects the rights of</p>

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
					alternate payees.
		§ 31639.8 (Contributions to Purchase Service Credit)	In some circumstances a general member may become a safety member with increased benefits. These benefits may apply to service while he/ she was a general member if the individual pays for this retroactive increase. Section 31639.8 allows a safety member's spouse or minor children to pay the balance of any additional contributions to the system due from the deceased member to purchase credit for service as a safety member for a period during which the safety member was a general member.	Yes	Protects rights of widowers and surviving children of deceased safety members.
C.	<u>IRC §401(a)(2)</u> <u>Exclusive Benefit.</u> All plan assets must be used for the exclusive benefit of employees and their beneficiaries.	Article XVI, section 17 of the California Constitution; §§31588.2 and 31595 (Fiduciary	These sections of the California Constitution and the CERL mirror the Code's (and ERISA's) exclusive benefit rules.	Yes	

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No.	Code Requirements	CERL ¹ Sec. Requirements)	Sec. Description	Comply?	MCERA Comments
C.1	The trust instrument must state that it is impossible prior to satisfaction of all liabilities for any plan assets to be used for purposes other than the exclusive benefit of employees and their beneficiaries and paying reasonable expenses. Treas. Reg. 1.401-2(a)(2).	§ 31564 (District Withdrawal from the system)	Counties cannot withdraw from or terminate a 37 Act system. All assets in the system must be used for retirement benefits. Section 31564 states that upon withdrawal of a district from a system, and when there are no district retirees, the district's contributions "shall" be refunded to the district.	Yes, for counties Unclear for districts	Counties cannot withdraw from a system. MCERA has not had any districts withdraw from the system. Clarified by VCP application Item II.A.9. See A.3 for more details.
C.2	<u>Mistake in Fact.</u> A plan may provide for the return of contributions that are made to the plan by a mistake of fact to the employer within one year after the date of contribution. Rev. Rul. 91-4.	No provision	N/A	N/A	
D.	<u>IRC §401(a)(7)</u>				
D.1	<u>Pre-ERISA Vesting Rules Apply</u> The plan must state that upon plan termination or the complete discontinuance of employer contributions, all participants must	§ 31564 51 AG 165 (districts)	There is no provision in the CERL that allows termination of a 37 Act retirement system or the discontinuance of county contributions. Counties		

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
	become 100% vested in benefits accrued to the date of termination or discontinuance, to the extent then funded. IRC §411(e)(2); IRC §401(a)(7), as in effect prior to ERISA.		cannot withdraw from or terminate a 37 Act system. Therefore, the vested-on-termination provision should be deemed satisfied.		
			A district may terminate its participation in a 37 Act system under § 31564. Section 31564 does not state that upon termination of a district's plan, all members are 100% vested to the extent funded. ⁸ Instead, section 31564 says that employee contributions will be refunded as if they terminated employment with the district and where there are no existing retirees, employer contributions are returned to the employer.	Unclear	Resolved by VCP application Item II.A.1. Also see discussion in A.3 above.

⁸ Under California vested rights law, a district cannot terminate pension benefits for existing or prior employees. Any reductions in retirement benefits must be made up by reasonably equivalent new retirement benefits.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
	A currently employed member must be 100% vested on reaching normal retirement age. Rev. Rul. 66-11.	No Normal Retirement Age provisions (But see § 31672 below regarding vesting at age 70)	The CERL does not include a "Normal Retirement Age." The CERL establishes the age at which members may retire and also establishes the length of membership required for full vesting in employer provided benefits. Additionally, the CERL provides that a member is always 100% vested at age 70 whether or not he/ she is an active employee. See § 31672.	Yes	NRA provisions are not required for governmental plans until 2013. VCP application item II.A.5 proposes new rules for the CERL concerning Normal Retirement Age.
	§§ 31628, 31629, and 31629.5 (vested terms)		Section 31628 states that on termination of service a member may receive his or her accumulated contributions. Section 31629.5 also says that a member has the right (effective 2003) to leave contributions in the system and remain a "member" and thereby receive benefits from the employer contributions.	Yes	

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		<p>§§ 31663.25, 31663.26, and 31664.5 (safety member vesting)</p>	<p>Sections 31663.25 and 31663.26 provide that any safety member with 10 years of service and who is age 55 or with 20 years of service without regard to age "may be retired" and receive pension benefits upon filing an application. Section 31664.5 also provides that with 25 years of service a safety member may retire with a minimum 30% retirement allowance.</p>	<p>Yes</p>	<p>Section 31663.26 applies to MCERA.</p>
		<p>§ 31672 (general member vesting)</p>	<p>Section 31672 provides that any member (safety or general) who reaches age 70 (even if not an active employee) or age 55 with 10 years of service or has 30 years of service regardless of age "may be retired" on application and that age 55 may be lowered to age 50 by the BOS.</p>	<p>Yes</p>	<p>The BOS Resolution 82-119 lowered the minimum age to 50. See Tab B.5 of submission.</p>

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		§ 31672.1 (temporary, part-time, seasonal, etc. vesting)	Section 31672.1 provides a special vesting rule for part time, seasonal, temporary, and intermittent employees.	Yes	
		§ 31672.2 (special elective officer rule)	Section 31672.2 provides a special rule making it easier for elected officers in one county to vest.	N/A to MCERA	Section 31672.2 does not apply to MCERA.
		§ 31672.5 (special rule for prior member of other system)	Section 31672.5 – same as above.		Section 31672.5 applies to MCERA.
		§31506 (superseded systems)	Section 31506 states that retired members of a superseded system are vested.	Yes	Section 31506 applies to MCERA.
		§§31486.4, 31499.4 and 31511.4 (Three counties)	Three county systems vest members on: – 10 years of service or – 65 years for normal retirement – 55 years for early retirement	N/A to MCERA	These sections do not apply to MCERA.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
E.	<p><u>IRC §401(a)(8)</u></p> <p>Forfeitures. A pension plan must provide that funds arising from forfeitures may not be used to provide increased benefits in a pension plan. Treas. Reg. §§ 1.401-1(b)(1)(i), 1.401-7(a).</p>	§31485.13	Section 31485.13 meets the forfeiture requirements.	Section 31485.13 is effective on January 1, 2009	Benefit formulas are fixed by statute and BOS action so forfeitures cannot be used to increase benefits. In limited circumstances a BOR may use "excess" investment earnings to provide additional benefits but earnings are not forfeitures.
F.	<u>IRC §401(a)(9)</u>				
F.1	<p><u>Required Beginning Date</u></p> <p>The plan must provide that a participant's entire interest must be distributed or begin to be distributed no later than April 1 following the later of the year in which the employee attains age 70½ or the year in which the employee retires.</p>	§ 31485.14 (Required Minimum Distributions ("RMD"))	Section 31485.14 provides that all of the requirements of IRC § 401(a)(9) must be met, including the date that benefits must begin.	Section 31485.14 is effective as of January 1, 2009. However, because of vested rights rules this change can not	VCP application Item II.A.2 provides detailed model regulations to meet Code § 401(a)(9).

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply? adversely affect existing employees. The proposed model regulations are designed to meet both the qualification rules and Code § 401(a)(9).	MCERA Comments
F.1.a	Distribution by the calendar year in which a former employee attains age 70 1/2.	§§ 31706 and 31835 (reciprocity)	Section 31706 requires members who have left accumulated contributions in the system and have not applied for deferred retirement to begin receiving benefits by April 1 of the year following the year the member attains age 70 1/2, unless the member is actively employed in a reciprocal 37 Act system, PERS or other California reciprocal public system.	Unclear	These sections provide "reciprocity," which is a substantial benefit to all members who move between California public retirement systems. Under reciprocity prior service with a reciprocal agency counts for vesting and participation under later agencies. Also, the highest average compensation among reciprocal plans is applied to all these plans for benefit calculations. However, to use reciprocity, a member must retire at the same time from all

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
					systems. Therefore, a member older than 70 1/2 who is an active employee of a reciprocal agency loses the benefit of reciprocity if he/ she continues working. This is addressed in VCP application Item II.A.2.
F.2	<u>Lifetime Required Distributions</u> The plan must provide that distributions must begin no later than the required beginning date and must be made over the life or life expectancy of the employee or joint lives or life expectancy of the employee and a designated beneficiary. IRC §401(a)(9)(A)(ii).	§31485.14 (Required Minimum Distributions)	The CERL provides for lifetime benefits of the member and surviving beneficiaries. The member or beneficiary may also elect a lump-sum return of member contributions (plus interest).	Yes, per § 31485.14 effective as of January 1, 2009	
F.3	<u>Death After Distributions Begin</u> The plan must provide that if the employee dies before his entire interest has been distributed, the remaining portion must be distributed at least as rapidly as under the method of distributions	§31485.14 (Required Minimum Distributions)	Section 31485.14 provides that all of the requirements of IRC § 401(a)(9) must be met, including the date that benefits must begin.	Yes, per § 31485.14 effective as of January 1, 2009	The CERL provides lifetime survivor benefits to named beneficiaries so this requirement should be met. But, see the

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
	being used as of the date of death. IRC §401(a)(9)(B)(i).				Comment in Section F.4.b(ii) regarding surviving children and VCP application Item II.A.2.
F.4	<p><u>Death Before Distributions Begin.</u></p> <p>The plan must provide that if the employee dies before distribution of the employee's interest has begun, distributions must be made in accordance with F.4.a, b or c below.</p>	§31485.14 (Required Minimum Distributions)		Yes, per § 31485.14 effective as of January 1, 2009	Generally, the CERL provides lifetime benefits to named beneficiaries so this requirement should be met. But, see the comment in Section F.4.b(ii) regarding surviving children.
F.4.a	If the employee does not have a designated beneficiary, the entire interest of the employee must be distributed within 5 years of the employee's death. IRC §401(a)(9)(B)(ii).	§ 31485.14 (Required Minimum Distributions)		Yes, per § 31485.14 effective as of January 1, 2009	See VCP application Item II.A.2. MCERA makes distributions within one week of receiving the member's certified death certificate and the social security number of the beneficiary.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
F.4.b	If the employee has a designated nonspouse beneficiary distributions must comply with the following rules:				
F.4.b(i)	Begin by December 31 of the calendar year following the calendar year in which the employee died; and	§ 31485.14 (Required Minimum Distributions)		Yes, per § 31485.14 effective as of January 1, 2009	See F.4.a. above.
F.4.b(ii)	Be made over the life or life expectancy of the designated beneficiary. IRC §401(a)(9)(B)(iii); Treas. Reg. § 1.401(a)(9)-3, Q&A-3(a).	§§ 31765, 31765.1, 31780, 31781.1, 31781.2, 31781.3, 31787, 31791 (preretirement survivor annuity)	Upon the death of a member, sections 31765, etc. permit the member's surviving spouse to elect a preretirement survivor annuity payable to the surviving spouse for life. The monthly payments of this benefit are equal to the payments the spouse would have received had the member retired on the date of death and elected the joint and 50% (60% in the case of sections 31765.1 and 31781.1 and 100% in the case of section 31787) survivor annuity. <i>If the spouse dies and is survived by unmarried minor children (under age 18), payments continue to the surviving</i>	Unclear	The CERL has a number of provisions that provide benefits to surviving children. It is not clear which MDIB rule applies to the benefit payment to surviving children. If the life annuity with period certain rules apply, then the MDIB rules should be met. If the joint & survivor annuity rules apply, then it is unclear whether the MDIB rules are met. This is resolved in VCP application Item II.A.2.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
			<p>minor children until the age of majority (age 18, age 21 if unmarried and full-time student), death or marriage. Sections 31781.2 and 31781.3 provide alternative preretirement survivor benefits to section 31781.</p> <p>Section 31791 permits the BOR to increase the maximum age for full-time students to receive preretirement survivor benefits to age 23 and to permit legally incompetent children to continue receiving survivor benefits regardless of age.</p>		MCERA follows the CERL and pays minor children when eligible for benefits.
		§ 31787.5	Section 31787.5 provides a special pre-retirement death benefit to a member's surviving spouse when the member is killed, or dies from an accident or injury caused by external violence or force, in the performance of his or her duties equal to 25%, 40% or 50% of the survivor benefit in section	Yes	Section 31787.5 applies to MCERA.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
			31787 for one child, two children or three children, respectively, until the age of majority (18 or 21 in the case of unmarried full time students). This benefit is in addition to the 100% pre-retirement survivor annuity described in section 31787. This section provides that the additional benefit <i>will be reduced</i> to the extent it exceeds the maximum benefit payable under tax laws. This provision generally applies to active law enforcement, firefighters, or other members specified by the BOR.		
F.5	<p><u>Incidental Benefit Rules</u></p> <p>The plan must provide that distributions must meet the minimum distribution incidental benefit ("MDIB") rules. 401(a)(9). IRC §401(a)(9)(G); Treas. Reg. § 1.401(a)(9)-1, Q&A-3(a). Generally these rules limit the length of time over which distributions may be made in</p>	§§ 31685 et seq. and §§ 31458.3 and 31458.4 (ex-spouse)	Section 31685 et seq. treats a former spouse as a member and allows the former spouse to designate a beneficiary. §§ 31458.3 and 31458.4 also allow the former spouse to designate any individual as a beneficiary.	Yes, per § 31485.14 effective as of January 1, 2009	<p>These sections apply to MCERA.</p> <p>The Code limits the period over which benefits to the alternate payee and the alternate payee's beneficiary may be paid. For example, if the domestic relations</p>

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
	order to ensure that the plan provides "retirement" benefits.				<p>order requires segregation of the former spouse's share of the member's benefits, payments to the alternate payee <i>must</i> begin no later than the member's required beginning date and must be paid over the life expectancy of the <i>alternate payee</i>. Treas. Reg. §1.401(a)(9)-8, Q&A-6(b)(2).</p> <p>Resolved with VCP application Item II.A.2.</p>
		<p>§§ 31486.6, 31492 and 31497.7 (joint and survivor annuity)</p> <p>See also: §§ 31760.1, 31760.2, 31760.5, 31785, 31785.1, 31786 31786.1 and</p>	<p>Sections 31486.6, 31492.1, 31497.7 and other sections provide a post-retirement survivor annuity that may be more than 50% of the member's retirement allowance payable to the surviving spouse for life or, if no surviving spouse, to the surviving unmarried minor children through age 18 (or age 21 for unmarried</p>	<p>Yes, per § 31485.14 effective as of January 1, 2009</p>	<p>Sections 31486.6, 31492, 31497.7 and 31760.5 do not apply to MCERA.</p>

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		31791 (joint and survivor annuity)	full-time students) or death or marriage, if earlier. In lieu of the specified joint and 50% to survivor annuity, the member may elect a smaller benefit for the member's life with a different survivor percentage, "as approved by the board of retirement." The other listed sections also provide benefits to surviving children.		
		§§ 31760.7 and 31780.2 (domestic partner)	<p>Section 31760.7 permits a member to elect or change any optional retirement allowance permitted with respect to domestic partners in the same manner as a member would be permitted with respect to a spouse.</p> <p>Section 31780.2 provides that a domestic partner is entitled to the same rights as a spouse.</p>	<p>Yes, per § 31485.14 effective as of January 1, 2009</p> <p>The Defense of Marriage Act ("DOMA"), creates issues under the 401(a)(9) rules for domestic partners and same sex partners. DOMA, however, has been held to be</p>	These sections do not apply to MCERA.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
				unconstitutional. See <u>Gill v. Office of Personnel Management, et al</u> , Civil Action No 09-10309-JLT at Doc # 75 (August 17, 2010).	
		<p>§§ 31762 and 31764 (joint and survivor annuity options)</p>	<p>These sections provide that the post-retirement survivor benefit payable under optional settlement 2 (100% of the member's reduced retirement allowance) and optional settlement 4 (any percentage approved by the BOR upon the advice of the Actuary) may be paid to anyone with an "insurable interest" in the member, without restriction.</p>	<p>Yes, per § 31485.14 effective as of January 1, 2009</p>	<p>If under §§ 31762 and 31764, the member designates a nonspouse beneficiary who is more than 10 years younger than the member, the 100% post-retirement survivor annuity will not meet the IRS minimum distribution incidental benefit rule. Resolved by VCP application, Item II.A.2.</p> <p>MCERA follows the CERL and pays annuitant benefits as described in the CERL</p>

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
		§ 31776.3	Section 31776.3 requires that DROP benefits comply with the Code section 401(a)(9) rules.	N/A to MCERA	Section 31776.3 does not apply to MCERA.
F.6	<u>Required provisions</u> The plan must provide that distributions will be made in accordance with Treas. Reg. §§ 1.401(a)(9)-1 thru 1.401(a)(9)-9. Treas. Reg. § 1.401(a)(9)-1, Q&A-3(a).	§ 31485.14 (Required Minimum Distributions)		Yes, per § 31485.14 effective as of January 1, 2009	See VCP application Item II.A.2 setting out model regulations under Code § 401(a)(9).
F.7	<u>Minimum distribution rules control</u> The plan must provide that IRC §401(a)(9) plan provisions override any distribution options under the plan that are inconsistent with that section. Treas. Reg. §1.401(a)(9)-1, Q&A-3(a).	§ 31485.14 (Required Minimum Distributions)		Yes, per § 31485.14 effective as of January 1, 2009	See VCP application Item II.A.2 setting out model regulations under Code § 401(a)(9).
G.	<u>IRC §401(a)(16)</u> Benefits or contributions may not exceed the limits of IRC §415. See below.	See Code section 415 discussion at Section V below.		Yes	

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H.	<p><u>IRC §401(a)(17)</u></p> <p>The plan must provide that total annual compensation taken into account when determining a participant's benefits for a plan year is limited to the annual compensation limit. IRC §401(a)(17)(A); Treas. Reg. §1.401(a)(17)-1(b)(1).</p>	§ 31671	Section 31671 provides that the compensation limit applies to anyone who first becomes a member of the system on or after 7/1/96.	Yes	Also see VCP application Item II.A.3 for proposed model regulations.
		§§ 31676.01, 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, 31676.15, 31676.16, 31676.17, 31676.18, and 31676.19 (general member formula)	These CERL sections state that "any limitation in any provisions of this chapter upon the amount of compensation used for <i>computing rates of contributions</i> shall be disregarded."	Yes. This language only affects rates if contributions are made by members and does not affect the compensation on which contributions are based.	Sections 31676.1, 31676.11 and 31676.12 apply to MCERA.
I.	<p><u>IRC §401(a)(24)</u></p> <p>Group Trust. A group trust can remain tax exempt while accepting funds from a qualified governmental plan, individual retirement account or an eligible governmental plan under IRC</p>	No provision	N/A	N/A	

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
	§457(b) if the requirements described in IRC §401(a)(24) are met.				
J.	<u>IRC §401(a)(25)</u> A defined benefit plan must specify actuarial assumptions in a manner that precludes employer discretion in order to provide definitely determinable benefits. IRC §401(a)(25).	No provision	See Section A.5.c – above concerning interest and mortality	Yes	Interest and mortality assumptions used for actuarial equivalents are the interest and mortality assumptions used in the actuarial valuation. See VCP Item II.A.9.
K.	<u>IRC §401(a)(31)(A)</u> The plan must provide that distributees of an eligible rollover distribution may elect to directly roll over the distribution into an eligible retirement plan. IRC §401(a)(31)(A).	§ 31485.15	Section 31485.15 provides that the requirements of 401(a)(31) must be met, subject to terms and conditions established by the BOR, which refers to administrative procedures.	Yes, per § 31485.15 effective as of January 1, 2009	See VCP application Item II.A.4 for model regulations on this issue.
K.1	<u>Distributee</u> For direct rollovers, a distributee for rollover purposes includes the employee, former employee, a surviving spouse and a former spouse who is an alternate payee	§ 31685.2 (Domestic relations orders)	Section 31685.2 provides that a refund to a nonmember "shall be effective" when a check is mailed. The section is	N/A to MCERA	Section 31685.2 does not apply to MCERA. See CERL VCP application Item II.A.4

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	under a domestic relations order. Treas. Reg. §1.402(c)-2, Q&A-12(a), IRC 402(c)(8)(B).		silent on rollovers by a nonmember.		to resolve this issue.
	In limited situations, "distributee" also includes an employee's nonspouse beneficiary.	§ 31485.15		Yes	Nonspouse beneficiaries were added to the definition of distributee, effective for plan years beginning on January 1, 2010. This was an optional provision prior to 2010. See VCP application Item II.A.4 for proposed model regulations.
K.2	<u>Eligible Retirement Plan</u> Eligible retirement plan means an individual retirement account under 408(a), an individual retirement annuity under 408(b), a qualified plan under 401(a), an annuity contract under 403(a). An annuity plan under 403(b), an eligible governmental plan under 457(b). Effective 1/1/2002. Roth IRAs, effective 1/1/2006.	§ 31485.15		Yes	See VCP application Item II.A.4 for clarification.

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
	Nonspouse beneficiaries can make rollovers to individual retirement accounts that are treated as an inherited IRA.			Yes	Plans are required to allow nonspouse beneficiaries to make rollovers into IRAs in any plan years beginning on January 1, 2010. Prior to 1/1/2010, this was an optional provision. See VCP application Item II.A.4 for proposed model regulations.
L.	<u>IRC §401(a)(31)(B)</u> Plans with involuntary cash-out provisions must require that a distribution in excess of \$1,000 is rolled over to an IRA if there is no election to take cash.	§31629.5	The CERL does not contain an involuntary cash-out provision. Section 31629.5 allows members to elect to leave contributions in the system. The absence of an election is deemed to be an election to keep funds in the system. Section 31629.5 is effective January 1, 2003.	Yes	

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No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
M.	<p><u>IRC §401(a)(36)</u></p> <p>A pension plan may provide that benefits may be paid to an employee who has attained age 62 or who has reached normal retirement age ("NRA") and who has not separated from employment. IRC §401(a)(36). NRA under a plan generally must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. Treas. Reg. §1.401(a)-1(b)(2)(i).</p>	<p>§§ 31670 through 31682 (general members)</p> <p>§§ 31662 through 31664.65 (safety members)</p>	<p>The CERL does not define NRA. A member is fully vested on reaching age 70 and may receive benefits then. Also see discussion of NRA in Section D.1.</p>		<p>See also VCP application Item II.A.5 regarding Normal Retirement Age.</p> <p>For governmental plans, the NRA rules are not effective until plan years beginning on or after January 1, 2013.</p>
N.	<p><u>IRC §401(a)(37)</u></p> <p>A plan must provide that the survivors of participants who die while performing qualified military service (as defined in IRC §414(u)) are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided to the survivors under the plan if the participant had resumed and then terminated employment on account of death. IRC</p>	<p>§ 31485.17</p>	<p>§ 31485.17 requires the survivors of any member who dies while performing qualified military service to receive any additional benefits (except accruals) that would have been provided had the member resumed employment with the employer and then terminated on account of death in compliance with Code § 401(a)(37).</p>	<p>Yes</p>	

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
	§401(a)(37).				
O.	<u>IRC §401(h)</u>		Sections 31691 and 31592.2 allow a system to provide retiree medical benefits.	See below	Optional provision that allows employers to provide retiree health benefits through the employer's pension plan.
O.1	A qualified plan may not provide for benefits for sickness, accident, hospitalization, or medical expenses except in compliance with section 401(h).	§§ 31525, 31592.2, 31592.4, 31691 and 31691.1 (retiree medical benefits)	Section 31525 allows the BOR and BOS to establish regulations to provide a 401(h) account to provide retiree health benefits in accordance with the Code. Sections 31691 and 31592.2 allow benefits. Section 31592 allows a direct contribution to the 401(h) account.	Yes	MCERA pays retiree health benefits under CERL §§ 31592.2 and 31592.4
			31592.2 and 31592.4 also allow trust assets accounted for as "excess earnings" to be treated as employer pension contributions – but not to be transferred to a 401(h) account or to be paid for health benefits – to the extent the employer has	Yes, if operated properly	Sections 31592.2 and 31592.4 apply to MCERA.

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
			made contributions to the 401(h) account.		
		§ 31691.1 (cash in lieu of medical benefits)	Section 31691.1 provides for payment of taxable cash and not medical benefits. Cash payments are not elective by retirees.	Yes	
		§§ 31694, and 31694.1 through 31694.3	A 401(h) account may be established under 31694.1 and 31694.2. Per Code § 401(h), assets contributed to this account are commingled for investment by the 37 Act system and provide retiree health benefits established by the plan sponsor such as a district. Separately, if a 401(h) account is not used, a plan sponsor may establish its own separate welfare benefits trust to hold assets for retiree health benefits. The assets of this trust are not governed by Code 401(h) and are NOT commingled for investment with the assets	Unclear	Sections 31694.1 and 31694.2 require clarification to ensure that they meet the requirements of Code § 401(h). Resolved by VCP Items II.A.6 and B.

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
			of the 37 Act system. The sponsor may contract with the 37 Act system to manage the investments of this separate trust, and the properly allocated expenses of the system are charged to that trust (or its sponsor). This provides economies of scale, reducing the cost and increasing the assets available for retiree health benefits.		
		§ 31696.1 et seq. (long term care insurance)	Section 31696.1 allows a system to provide a long term care (LTC) insurance program paid for by employees.	Unclear. One '37 Act system administers an LTC program that we understand is separately funded by the County sponsor. MCERA has not established an LTC program.	Sections 31696.1 et seq. does not apply to MCERA. Clarified by VCP Item II.A.6.
		§ 31698 et seq. (vision care)	Section 31698 allows the system to establish a vision care program for retirees. This is a health program that is subject to	Unclear, no vision care program has been established by a 37 Act	Sections 31698 et seq. does not apply to MCERA. Clarified by VCP Item

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description 401(h).	Comply? retirement system.	MCERA Comments II.A.6.
P.	<u>IRC §402(c)</u> Plan may provide that it will accept direct or indirect rollovers of eligible rollover distributions. IRC §402(c).	No provision		Yes	
Q.	<u>IRC §408A(e)</u> Plan members must be permitted to make direct rollovers of eligible rollover distributions to Roth IRAs (subject to adjusted gross income restrictions).	No provision		Yes	
R.	<u>IRC §414(n)</u>				
R.1	Leased employees must be treated as employees of the employer for certain purposes.	No provision	We have not found any CERL provisions that apply to "leased" employees.	N/A	Code § 414(n) is part of the Code rules regarding participation and nondiscrimination in favor of highly compensated employees. These rules do not apply to governmental plans so Code § 414(n) does not apply to these plans.

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
S.	<u>IRC §414(u)(1)</u> USERRA - Makeup contributions made to a defined benefit plan by reemployed employee who was on qualified military service are not taken into account in applying the IRC §415 limits for the year in which the contribution is made, but is taken into account in the year to which the contribution relates.	§31649.5	Section 31649.5 allows reemployed members to purchase service credit.	Unclear	Section 31649.5 applies to MCERA. See VCP application Item II.A.7.
T.	<u>IRC §414(u)(9)</u> The plan may treat participants who die or become disabled on or after January 1, 2007, while performing qualified military service as having been rehired as of the day before the date of death or disability and then terminating employment on the date of death or disability. However, the same benefits or contributions must be provided for all similarly situated participants on a reasonably equivalent basis.	No provision	We are not aware of any CERL provision that addresses this requirement.	N/A	Optional

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
U.	<p><u>IRC §414(u)(12)</u></p> <p>Differential wage payments are not required to be treated as compensation for purposes of determining contributions and benefits under a plan, but they must be treated as compensation for purposes of applying the code. Accordingly these differential wage payments must be treated as compensation under Code Section 415(c)(3) and Treas. Reg. § 1.415(c)-2(d). Notice 2010-15.</p>	No provision	We are not aware of any CERL provision that addresses this requirement.	Yes	<p>Effective for differential pay paid after 12/31/2008.</p> <p>Amendment to the system is not required until the last day of the first plan year beginning on or after January 1, 2012.</p> <p>Participating Employers do not pay differential wages so this requirement does not apply to MCERA.</p>
V.	<u>IRC §415(b)</u>				
V.1	<p><u>Maximum limitation</u></p> <p>The plan provisions must preclude the possibility that the annual benefit payable to a participant will exceed \$160,000, as indexed (\$195,000 for 2009). IRC §§ 415(a)(1)(A), 415(b); Treas. Reg. §§ 1.415(a)-1(d)(1), 1.415(b)-1(a)(3).</p>	<p>§§ 31899 et seq., 31899.2 (incorporation of IRC §415 by reference)</p>	<p>Sections 31899 et seq. provide that the Code section 415 limits apply to the CERL. Section 31899.2 provides that persons who become members on or after January 1, 1990 are subject to Code section 415 and persons who became members before</p>	<p>Yes, but certain technical rules in the final regulations have not been adopted.</p>	<p>See VCP application Item II.A.8.</p>

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description then are subject to Code section 415 to the extent not grandfathered.	Comply?	MCERA Comments
		§§ 31685, 31685.2, 31685.4, and 31685.5 (domestic relations orders)	Section 31685 permits the <i>alternate</i> payee to make redeposits and to purchase service credit. Section 31685.2 permits the member to redeposit a refund made to the <i>alternate</i> payee.		Sections 31685, 31685.2, 31685.4 and 31685.5 do not apply to MCERA. See VCP application Item II.A.8.
		§ 31874.3 (optional COLAs)	Section 31874.3 allows the BOR to provide supplemental COLAs on a year by year basis.		See VCP application Item II.A.8.
V.2	<u>Incorporation by reference</u> A plan may incorporate the section 415 limitations by reference; provided, however, that there are certain rules that must be in the plan document, including the following:	§ 31899 et seq.		Yes	See VCP application Item II.A.8.
V.2.a	To the extent that section 415 can be applied in more than one manner and a statutory default rule exists, the statutory default rule will apply, unless the plan	§ 31899 et seq.		See VCP application.	See VCP application Item II.A.8.

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
V.2.b	<p>includes another acceptable rule. Treas. Reg. § 1.415(a)-1(d)(3)(ii).</p> <p>To the extent that section 415 can be applied in more than one manner and no statutory default rule exists, then the plan <i>must</i> specify the manner in which the limitation is to be applied. For example, if a member may participate in the 37 Act system and a supplemental defined benefit plan, then both plans must specify in a consistent manner under which of the employer's two plans the benefit must be reduced to meet the Code section 415(b) limit. Treas. Reg. § 1.415(a)-1(d)(3)(iii).</p>	§ 31899 et seq.		No	See VCP application Item II.A.8.
V.3	<p><u>Annual benefit</u></p> <p>If a benefit is payable in a form other than a straight life annuity, the benefit is tested through "actuarial equivalence" to a straight life annuity. IRC §415(b)(2)(B); Treas. Reg. §1.415(b)-1(b)(1)(B). For purposes of determining the actuarial equivalence, the interest rates and mortality tables are mandated by the tax law. IRC</p>	No provision	N/A	No	See VCP application Item II.A.8.

**TAX COMPLIANCE - CERL
MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("MCERA")**

No.	Code Requirements	CERL ¹ Sec.	Sec. Description	Comply?	MCERA Comments
V.4	<p><u>Defined Contribution Benefits</u></p> <p>Section 415(c) limits the annual additions to all of an employer's defined contribution plans for a member to \$49,000 for 2009. Annual additions in the DB plan context generally include after tax member contributions which are not part of normal contributions, such as contributions under 31627. Annual additions also generally include all member and employer contributions to a "401(a) plan" but not to a 457(b) deferred compensation plan. The annual contributions to a 37 Act system that are counted as DC contributions for the limits must be added together with the contributions and other additions to a 401(a) plan to determine if the 415(c) limits of the employer are met by the system. If they are not met, then the plans must specify the order of cutback.</p>	<p>§§ 31899.2 and 31899.3</p>	<p>Sections 31899.2 and 31899.3 provide that CERL benefits are "subject to the limitations in the Internal Revenue Code upon benefits that may be paid by public retirement systems."</p>	<p>Unclear</p>	<p>See VCP application Item II.A.8.</p>

H

TAB H

CODE § 401(a)(7)

PRE-ERISA VESTING RULES

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTION 401(a)(7)**

I. ISSUES

Code § 401(a)(7), as in effect prior to ERISA, requires plans to contain language that states that upon plan termination or the complete discontinuance of employer contributions, all participants must become 100% vested in benefits accrued up to the date of the termination or discontinuance to the extent the plan is funded. However, under CERL § 31654 a participating district may terminate its participation in a system without fully vesting members upon termination of the district's participation.

In addition, pre-ERISA Code § 401(a)(7) required members to be 100% vested upon reaching normal retirement age ("NRA"). The CERL does not define NRA. However, CERL § 31672 does say members may apply for retirement benefits upon attaining age 70, which we understand as meaning the member becomes 100% vested at that time. In addition, each system is partly funded with member contributions that are recorded in a member account. On termination of employment, a member may receive a distribution of the value of his or her member account balance.

Please see Section D of the enclosed Compliance Chart for additional information.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

Unclear Provision

31564. *All officers and employees of any district who have become members of the association as provided in Section 31557, may be withdrawn by a resolution of the governing body declaring all of the district's employees withdrawn from the association; provided, the governing body has first received a written petition signed by a majority of its officers and employees requesting that the district's officers and employees be withdrawn from the association.*

Upon the adoption of any resolution to withdraw its members, all accumulated contributions held in the association shall be refunded to the district's employees upon the effective date of their withdrawal and in the same manner as the accumulated contributions would be refunded upon the termination of their employment by the district.

Upon the adoption of any resolution to withdraw its members and where there are no existing retirees from the district, the district's contributions shall be refunded to the district, or shall, upon the election of and designation by the governing body of the district, be transferred to another public retirement system.

In the event of the transfer of district contributions to another public retirement system, the employee contributions shall also be transferred to the other public retirement system.

The effective date of withdrawal of any resolution adopted pursuant to this section shall be at the end of the calendar month during which such resolution is adopted.

III. PROPOSED CORRECTION

The proposed correction is: (1) add proposed CERL § 31485.16 which provides that accrued benefits are nonforfeitable upon reaching normal retirement age, and that upon termination of the system or discontinuance of employer contributions member becomes fully vested to the extent the system is then funded, (2) add proposed CERL § 31485.19 which gives the board of retirement of each system the authority to establish regulations setting out the system's normal retirement age, and (3) amend CERL § 31654 to state that refunds and/ or transfers that do not comply with Code § 401(a) will not be made from the system. The words italicized below are the corrective changes being proposed to the CERL.

PROPOSED TAX COMPLIANCE CHANGES TO THE CERL

An act to amend Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code relating to county employees retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB __, as introduced, _____ County employees. retirement: Internal Revenue Code compliance.

It is intended that the county employees' retirement systems are to be tax qualified under the Internal Revenue Code. This status preserves the deferred treatment of federal income tax on public employer contributions to public employee pensions and ensures that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of the Internal Revenue Code.

The County Employees Retirement Law currently includes a number of provisions that are designed to maintain tax qualification for these systems. This bill would add or clarify existing provisions as needed to maintain that status.

Vote: _____

Add the following new sections to the CERL:

31485.16. Notwithstanding any other provision in this Chapter, the rights of each member to his or her accrued retirement benefits under the retirement system shall be non-forfeitable in accordance with the requirements of section 401(a) of Title 26 of the United States Code that are applicable to public employee plans as follows:

(a) On the member's attainment of normal retirement age as defined by the retirement System while currently employed by an employer that maintains such system.

(b) To the extent then funded, on the date of the termination of the system, the partial termination of the system, or the complete discontinuance of contributions under the system, as provided in such Title.

When a member's accrued benefits become non-forfeitable under this section, the member may be retired upon filing with the board a written application in the manner provided by Article 8 and Article 9 of this Chapter, as applicable.

31485.19. (a) *A member who has not attained normal retirement age shall have a bona fide separation from service to the extent required by section 401(a) of Title 26 of the United States Code before working for the county or a district after retirement pursuant to this chapter. The board shall establish, by regulation, the criteria under which a bona fide separation is satisfied.*

(b) *Notwithstanding any other provision in this chapter, to the extent required by section 401(a) of Title 26 of the United States Code, no amount shall be paid to any member before the earlier of the date the member has attained normal retirement age or has had a bona fide separation from service.*

(c) *The board may establish normal retirement age by regulation.*

Amend the CERL as follows:

31564. All officers and employees of any district who have become members of the association as provided in Section 31557, may be withdrawn by a resolution of the governing body declaring all of the district's employees withdrawn from the association; provided, the governing body has first received a written petition signed by a majority of its officers and employees requesting that the district's officers and employees be withdrawn from the association. Upon the adoption of any resolution to withdraw its members, all accumulated contributions held in the association shall be refunded to the district's employees upon the effective date of their withdrawal and in the same manner as the accumulated contributions would be refunded upon the termination of their employment by the district.

Upon the adoption of any resolution to withdraw its members and where there are no existing retirees from the district, the district's contributions shall be transferred to another public retirement system *that is intended to be a tax-qualified retirement plan under section 401(a) of Title 26 of the United States Code.*

No refunds, distributions or transfers of contributions or other funds shall be made to any employees or to any district unless such action complies with the requirements of section 401(a) of Title 26 of the United States Code.

In the event of the transfer of district contributions to another public retirement system, the employee contributions shall also be transferred to the other public retirement system.

The effective date of withdrawal of any resolution adopted pursuant to this section shall be at the end of the calendar month during which such resolution is adopted.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

TAB I

CODE § 401(a)(9)

REQUIRED MINIMUM DISTRIBUTION RULES

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTION 401(a)(9)**

I. ISSUES

In most cases, the proposed resolution of any issues would be based on the use by the systems of the reasonable, good faith application by governmental systems of the 401(a)(9) rules. This standard was provided by Congress for the Service to use in working with these types of governmental retirement systems. (See Section 823 of the Pension Protection Act of 2006 and Treasury Regulation § 1.401(a)(9)-1, Q&A-2(d)).

MCERA discovered that certain distributions were not made in compliance with the required minimum distribution rules. Please see Tab Q for additional details about the failure and proposed correction.

1. Effective Date

The CERL was amended effective January 1, 2009 to add § 31485.14 which incorporates in whole section 401(a)(9) and provides that it overrides other provisions in the CERL. It is not clear if this effective date is sufficient. This new statute however can be viewed as a restatement of what was intended by the California Legislature. (All benefits paid under a 37 Act system are lifetime benefits – “annuities” in the term used by the Code – or lump sum refunds of member contributions.)

2. Drafting in general

The CERL does not include the technical language that the Service usually requires to meet section 401(a)(9). Arguably, the Congressional mandate to allow a reasonable, good faith interpretation of the Code section 401(a)(9) rules by a governmental retirement system, together with the proposed language in the model regulations, resolves this issue.

3. Reciprocity

Most California public retirement systems provide reciprocity so service under one system counts as service for entry and for vesting under reciprocal systems when a member changes employment and retirement systems. Allowing reciprocity among the California public retirement systems was intended to foster an important public policy--to encourage talented individuals to remain in public service for their entire career without limiting employment to one employer because of retirement issues.

Reciprocal systems also calculate benefits based on the highest compensation earned under any other reciprocal system, subject to the compensation limits of section 401(a)(17). However, to obtain the advantage of reciprocity a member must retire from all reciprocal systems at the same time. This could lead to a situation where the member is currently employed while older than 70 1/2 and to obtain reciprocity cannot retire (start receiving benefits) from other systems in which he/she previously participated. If benefits were to start at 70 1/2 while he/she continued working then there could be a substantial loss of retirement income. Both of these results would harm the employee and serve no sound public policy. This issue is resolved if, in this situation, continued employment with benefits

earned under the current system is treated as if it were employment with the prior reciprocal system(s) for purposes of section 401(a)(9).

4. Minor Children

The CERL provides benefits to minor surviving children after the death of a surviving spouse who was receiving pre-retirement survivor benefits. The benefits to the children generally cease at age 18 (or in some cases age 21 or 22 if a full-time student). However, these benefits will continue beyond the surviving spouse's life. This issue is resolved if payment of the benefits to the surviving spouse is treated as payment to the minor surviving children.

5. Required Minimum Distributions

MCERA follows the terms of the CERL. The CERL does not include the required minimum distribution (RMD) requirements of Treas. Reg. § 1.401(a)(9)-6, Q&A-2(c). If this limit were added it would reduce benefits in applicable situations, and that cannot be done under the California Constitution which provides "vested rights" in retirement benefits for existing employees. This issue may be resolved, however, if the Service would approve payment of an annuity benefit in the amount allowed under the RMD rules and also a lump sum payment of the present value of the remaining amount, made within the existing time limit for payment of benefits.

6. QDRO and Alternate Payee

The CERL, for limited purposes, allows the system to treat a former spouse as if he/she were a member. This means that the CERL allows an alternate payee to designate a beneficiary. However, section 401(a)(9) requires that payments must begin to the alternate payee by the member's required beginning date -- not that of the alternate payee -- and the Code does not provide for payments to the beneficiary of an alternate payee. Also, under the CERL, the alternate payee may retire based on his or her age, as well as the age of the member. These issues are resolved if the California rules for payments to alternate payees are accepted and he/she is treated for purposes of complying with the Code as a separate member -- not just an alternate payee.

7. Domestic partners

Domestic partners and same sex spouses are treated in the same way as opposite sex spouses for all purposes under California law including distribution of retirement allowances. This issue also is resolved if California law is accepted. (Knowing that this is a sensitive issue, the model regulations, however, for now follow federal law as set out in DOMA even though one court has held DOMA to be invalid. Gill v. Office of Personnel Management, et al. Civil Action No 09-10309-JLT at Doc # 75 (August 17, 2010). But resolution of this issue may have significant political implications in California which need to be discussed and understood.)

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

1. Section 401(a)(9) overriding provision

31485.14. All distributions of benefits provided under this chapter shall comply with the requirements of Section 401(a)(9) of Title 26 of the United States Code that are applicable to public employee plans, including, but not limited to, requirements relating to the following:

(a) The time that benefit payments begin, including benefit payments paid after the death of a member.

(b) The form of distribution of benefits.

(c) Incidental death benefits.

(This section was effective on January 1, 2009.)

2. Payment By Required Beginning Date

31706. Any member who has left county service and has elected to leave accumulated contributions in the retirement fund or who is deemed to have elected a deferred retirement pursuant to subdivision (b) of Section 31700 and has attained age 70 but has not yet applied for a deferred retirement allowance and who is not a reciprocal member of a retirement system established pursuant to this chapter or the Public Employees' Retirement Law shall be notified in writing by the treasurer, or other entity authorized by the board, that the member is eligible to apply for and shall begin receiving a deferred retirement allowance by April 1 of the year following the year in which the member attains age 70 1/2. The notification shall be made at the time the deferred member attains age 70 and shall be sent by certified mail to the member's last known address, or to the member's last known employer, as shown by the records of the retirement system. If the member can be located but does not make proper application for a deferred retirement allowance with retirement to be effective by April 1 of the year in which the member attains age 70 1/2, the retirement system shall commence paying an unmodified allowance to the member. If the member cannot be located by April 1 of the year following the year in which the member attains age 70 1/2, all of the member's accumulated contributions and interest thereon shall be deposited in, and become a part of, the current pension reserve fund of the retirement system. The board may at any time after transfer of proceeds to the reserve fund upon receipt of proper information satisfactory to it, redeposit the proceeds to the credit of the claimant, to be administered in the manner provided under this law. This section shall not apply to a member while the member is actively employed past mandatory retirement age in a retirement system established under the provisions of this chapter or the Public Employees' Retirement Law.

(This section was effective on January 1, 1998.)

3. Reciprocity

31835. The average compensation during any period of service as a member of the Public Employees' Retirement System, a member of the Judges' Retirement System or Judges' Retirement System II, a member of a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a

retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be considered compensation earnable by a member for purposes of computing final compensation for that member provided:

(1) The period intervening between active memberships in the respective systems does not exceed 90 days, or 6 months if Section 31840.4 applies. That period shall not include any time during which the member was prohibited by law from becoming a member of the system of another county.

Notwithstanding anything in this chapter to the contrary, the 90-day or 6-month restriction referred to in this section or any other provision of this chapter effecting deferred retirement shall not be applicable to any members who left county or district service prior to October 1, 1949, and subsequently redeposited.

(2) *He or she retires concurrently under both systems* and is credited with the period of service under that other system at the time of retirement.

The provisions of this section shall be applicable to all members and beneficiaries of the system.

4. Minor Children

31765. Upon the death of a member who was eligible to retire, in circumstances in which a death benefit is payable under Article 12, if the deceased member has designated as beneficiary his spouse who survives him by not less than 30 days, such surviving spouse may elect, at any time before acceptance of any benefits from the retirement system, to receive, in lieu of the death benefit otherwise payable under Article 12, the same retirement allowance as that to which such spouse would have been entitled had such member retired on the day of his death and selected Optional Settlement 3. Such surviving spouse may elect in writing, before the first payment of any allowance is made, to receive in a lump sum payment all or any part of the member's accumulated additional contributions. The sum so paid shall not be included in the calculation of the annuity of the surviving spouse.

If, at the death of such spouse, she or he is survived by one or more unmarried children of such member, under the age of 18, such retirement allowance shall continue to such child or children, collectively, until every child dies, marries, or attains age 18. If such spouse dies, either before or after the death of such member without either making such election or receiving any portion of the death benefit, and no part of the death benefit has been paid to any person, prior to the payment of any benefits, the legally appointed guardian of such children shall make the election herein provided for on behalf of such surviving children as in his judgment may appear to be in their interest and advantage and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to such children *through the age of 21 if such children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.*¹

¹ The CERL contains a number of provisions that are the same or similar to this one.

5. Required Minimum Distributions ("RMD")

31761. Optional settlement 1 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and, if he or she dies before he or she receives in annuity payments the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her estate or to the person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board.

31762. Optional settlement 2 consists of the right to elect in writing to have a retirement allowance paid to him or her until his or her death, and thereafter to the person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

31763. Optional settlement 3 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death, and thereafter to have one-half of his or her retirement allowance paid to the person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

31764. Optional settlement 4 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and thereafter to have other benefits as are approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the persons, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement. The designation shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

6. QDRO and Alternate Payee

31685. (a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be *divided into two separate and distinct accounts in the name of the member and nonmember*, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

- (1) The right to a retirement allowance.
 - (2) The right to a refund of accumulated retirement contributions.
 - (3) *The right to redeposit accumulated contributions that are eligible for redeposit by the member.*
 - (4) *The right to purchase service credit that is eligible for purchase by the member.*
 - (5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.
 - (6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.
- (d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.
- 31685.1.** *"Nonmember," as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.*
- 31685.2.** (a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.
- (b) The nonmember shall file an application on a form provided by the system to obtain the refund.
- (c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.
- (d) The nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective.
- (e) The nonmember may not cancel a refund once it has become effective.
- (f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.
- (g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.

(h) If the nonmember receives a refund under this section, the member may elect to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

31685.3. (a) *The nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the member in accordance with the determination of the court required by Section 31685.*

(b) *The nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.*

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to the court-determined nonmember share of any previously refunded accumulated contributions and interest whether or not the nonmember elects to redeposit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before redeposit is completed. However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) Any redeposit by the nonmember shall be made by lump sum before retirement.

31685.4. (a) *The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 31685.*

(b) *The nonmember may purchase only that service credit that the court has determined to be the community property share of the nonmember spouse.*

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to the court-determined nonmember share of the service credit whether or not the nonmember elects to purchase the service credit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the

nonmember dies before the service credit is purchased. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

31685.5. *A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:*

(a) The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member.

(b) On the date of retirement, the member had sufficient credited service to retire for service, notwithstanding any service credit awarded to the nonmember.

31685.6. Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's application as the effective date of retirement, or the day following the date of court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board.

31685.7. (a) If the nonmember retires before the member retires, "final compensation" means the highest average annual compensation earnable by the member during the three consecutive years, or one year where applicable, prior to the date the nonmember retires. The nonmember may designate an earlier period to be used where the time period of the nonmember's marriage to the member and membership correspond.

(b) If the member has retired before the nonmember, the "final compensation" for the nonmember shall be the final compensation used in calculating the member's retirement.

(c) Upon receipt of an application for retirement by the member, the board shall notify the nonmember that his or her final compensation will not increase any further and shall identify which options are available to the nonmember and the impact thereof.

31685.8. A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

31685.9. If a member becomes disabled, the combined benefit payments to both the member and nonmember shall not exceed the amount that would otherwise be paid to the member alone.

31685.95. (a) Under no circumstances shall a retirement plan be required to make payments in any manner that will result in an increase in the amount of benefits provided under the plan.

(b) All benefits determined pursuant to Part 5 (commencing with Section 2610) of Division 7 of the Family Code and this article shall be determined on the basis of the actuarial economic and demographic assumptions and values prescribed by the board of the affected retirement plan.

31685.96. (a) The age factor applicable to the nonmember shall be based on the age of the nonmember at the time of his or her retirement.

(b) The board shall adopt age factors as recommended by the actuary.

31685.96. This article shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this article applicable in the county.

III. PROPOSED CORRECTION

The proposed correction is for MCERA to adopt the following model regulations.

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

SECTION I. GENERAL RULES

A. Purpose and Effective Date

In accordance with sections 31485.14, 31525 and 31706 of the California Government Code, the regulations set forth herein are effective as of _____ 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 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 [Optional]

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

b. Individual Account

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

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

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

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

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

A. Single Life RMD Annuity

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

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

If Member dies after RMD Annuity payments have commenced to the Member, then distributions must continue to be made over the remaining period over which distributions commenced in accordance with the schedule of payments made to the

Member. Reasonable delay for administration may occur, but in this case payments that should have been made in accordance with the original payment schedule must be made with the first resumed payment.

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

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

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

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

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

2. Rule Regarding Children of Member

Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-2(b), and taking into account the vested rights in retirement benefits created by the California Constitution, if a survivor benefit is payable to a surviving child of the Member for a limited period of time (such as until the child reaches the age of 21), 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 70 1/2.

2. Spouse is not the Sole Designated Beneficiary

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

3. No Designated Beneficiary

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

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

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

5. Election of Five Year Rule

A Designated Beneficiary may elect, at the time and in the manner determined by the Association, 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 Association 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 Association, in accordance with the CERL, to represent an appropriate amount to take account of cost of living increases affecting retirees or beneficiaries.

2. "Pop-Up's"

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

3. Single Sum Distribution

RMD Annuity Payments may increase to the extent necessary to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Member's death or under a good faith

interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, Q&A-14(a)(5) and taking into account the vested rights in retirement benefits created by the California Constitution, to allow a beneficiary to select a lump sum distribution of all or part of the Member's interest under the Association as provided in the CERL.

4. Plan Amendment

Benefits may increase if they result from an amendment to, or interpretation of, the County Employees Retirement Law, 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 Association for purposes of these regulations and section 401(a)(9) of the Code.

D. Reciprocal Member

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

E. Public Safety Member Killed In Line of Duty

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

F. Rollovers

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

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

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

SECTION VI DEFINITIONS

A. Annuity Starting Date

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

B. Designated Beneficiary

"Designated Beneficiary" means the individual who is designated by the Member (or the Member's surviving Spouse) as the beneficiary of the Member's interest under the Association and who is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the Treasury regulations. Accordingly, entities other than individuals, such as the Member's estate or a trust, cannot be a Designated Beneficiary of a Member's interest in the Association. However, the

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

C. Distribution Calendar Year

"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 preceeding 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

In accordance with Federal law, "Spouse" means a person who is married under California law except to the extent that such person is not treated as married under the federal Defense of Marriage Act, 1 U.S.C. § 7 to the extent required under the Code and Treasury regulations applicable to the Association.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

J

TAB J

CODE § 401(a)(17)

COMPENSATION LIMIT

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTION 401(a)(17)**

I. ISSUES

The CERL includes the required limitation under Code section 401(a)(17) on the amount of compensation that can be taken into account for purposes of computing benefits. Additionally, this provision was enacted in 1995, so it meets the requirements of the grandfather rule of Treasury Regulations § 1.401(a)(17)-1(d)(4). However, several issues are not explicitly dealt with in the CERL including the following:

1. Reciprocity

When a member is grandfathered under system 1 and becomes a member of system 2 (on change of employment) after July 1, 1996, is his/her compensation earned with an employer under system 2 still grandfathered? This is an issue because California systems have "reciprocity" for purposes of computing benefits and the highest compensation earned under one system is used for benefits under all that are reciprocal. We believe the answer is that the participant remains grandfathered under system 1 for all compensation because that conclusion complies with the regulations.

2. Member contributions

Members make contributions to systems for their benefits as a percentage of pay and these contributions are separately accounted for in individual member accounts. On retirement and receipt of a lifetime monthly benefit (we call it a "retirement allowance"), the member account is generally cancelled and the amounts in it are used to pay for the retirement allowance. On termination before retirement or on death an election may be made to receive the member account in a "refund." It appears to us that the ability to take a refund makes the member account a benefit and the contribution to that account cannot be based on compensation in excess of the section 401(a)(17) limit.

3. Confusion

The CERL provides a number of different retirement benefit formulas and each participating employer may choose from among them. In a number of situations the statutory language includes the statement that "any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded." Although unclear, this phrase appears to relate only to contributions by the employer and employees; it does not seem to affect the actual calculation of individual contributions by the member. To the best of our knowledge, systems have uniformly ignored this phrase with respect to member contributions. To avoid confusion as it may relate to the compensation limit of section 401(a)(17), we have proposed model regulations to clearly define what is affected by this phrase. See Section H of the enclosed Compliance Chart for additional information.

4. Clarity

"Barebones" drafting does not create tax compliance issues, but can cause administrative uncertainty. Therefore, we also have proposed setting out all of the basic rules under section 401(a)(17) in model regulations.

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

MCERA is operationally in compliance with the Code § 401(a)(17) requirements. MCERA monitors contributions to make sure none are made with respect to compensation in excess of the Code § 401(a)(17) limit and also monitors to make sure benefits are not calculated based on compensation above the Code § 401(a)(17) limit.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

1. Compensation Limit

31671. The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of the retirement system on or after July 1, 1996, shall not exceed the limitations in Section 401(a)(17) of Title 26 of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

2. Unclear Provision (This is one of a number of provisions that use the same language.)

31676.01. This section shall be operative in a county at such time or times as may be mutually agreed to in memoranda of understanding executed by the employer and employee representatives if the board of supervisors adopts, by majority vote, a resolution declaring that the section shall be operative in the county. Notwithstanding any other provisions of this chapter, the current service pension, or the current service pension combined with the prior service pension, is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-ninetieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age of Retirement	Fraction
50..	.7091
50 1/4.....	.7183
50 1/2..	.7274
50 3/4..	.7366
51..	.7457
51 1/4..	.7547
51 1/2..	.7637
51 3/4..	.7726
52.....	.7816
52 1/4..	.7907

52 1/2..	.7999
52 3/4..	.8090
53.....	.8181
53 1/4..	.8275
53 1/2..	.8369
53 3/4..	.8462
54.....	.8556
54 1/4..	.8656
54 1/2..	.8755
54 3/4..	.8855
55.....	.8954
55 1/4..	.9061
55 1/2..	.9168
55 3/4..	.9275
56.....	.9382
56 1/4..	.9498
56 1/2..	.9614
56 3/4..	.9730
57.....	.9846
.....	
57 1/4..	.9972
57 1/2..	1.0098
57 3/4..	1.0224
58.....	1.0350
58 1/4..	1.0487
58 1/2..	1.0625
58 3/4..	1.0762
59.....	1.0899
59 1/4..	1.1049
59 1/2..	1.1199
59 3/4..	1.1349
60.....	1.1500
60 1/4..	1.1611
60 1/2..	1.1723
60 3/4..	1.1835
61.....	1.1947
61 1/4..	1.2097
61 1/2..	1.2247
61 3/4..	1.2398
62.....	1.2548
62 1/4..	1.2707
62 1/2..	1.2867
62 3/4..	1.3026
63.....	1.3186
63 1/4..	1.3355
63 1/2..	1.3525

63 3/4..	1.3695
64.....	1.3865
64 1/4..	1.4047
64 1/2..	1.4229
64 3/4..	1.4411
65 and over..	1.4593

The fractions herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by each such board with respect to its retirement system.

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

III. PROPOSED CORRECTION

The proposed correction is for MCERA to adopt the following model regulations.

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

SECTION I. PURPOSE AND SCOPE

In accordance with section 31525 and section 31671 of the California Government Code, the regulations set forth herein are effective as of [____], 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 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 County Employees' Retirement Law of 1937 and in these Regulations as "Compensation Earnable", shall be limited to the amount allowed by Code section 401(a)(17) adjusted in accordance with the Code for increases in the cost of living. This limit has been increased by cost of living adjustments to \$245,000 for 2009 and 2010. This limit is called the Annual Compensation Earnable Limit in these regulations.

2. Members Affected By the Annual Limit

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

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

b. Applies to New Members 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 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 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 "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 \$245,000 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. Therefore, for example, under Government Code sections 31676.01, 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, 31676.15, 31676.16, 31676.17, 31676.18, and 31676.19, total Compensation Earnable, including Compensation Earnable in excess of the Annual Compensation Earnable Limit, may be taken into account for

purposes of computing the *rate* of Member contributions but may not be taken into account in determining the *amount* 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.

[Option 1: Since the Association's plan year corresponds to the calendar year, 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 that coincides with that plan year.]¹

[Option 2: Since the Association's plan year corresponds to the fiscal year beginning on the first day of [ENTER MONTH], the Compensation Earnable used to determine all benefit accruals for each plan year is limited to the Annual Compensation Earnable

¹ If the Association uses the calendar year as its plan year, Option 1 should be used in the regulations.

Limit in effect as of January 1 of the calendar year in which the plan year begins.²

2. Member Contributions

[Option 1: Since the Association's plan year corresponds to the calendar year, the 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 that coincides with the plan year.]³

[Option 2: Since the Association's plan year is the fiscal year beginning on the first day of [ENTER MONTH], 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.]⁴

D. Examples

1. Example - Retirement Allowance⁵

[Option 1: The retirement allowance provided by the Association is based on the highest 12 consecutive months of Compensation Earnable ending within the plan year. The Annual Compensation Earnable Limit was \$225,000 for the 2007 calendar year and \$230,000 for the 2008 calendar year. A Member retires in May, 2008. The Member's highest 12 consecutive months of Compensation Earnable is for the period May 1, 2007 through April 30, 2008. The annual Compensation Earnable used to for determining this Member's benefits for the 2008 year is limited to \$225,000, not \$230,000, because this is the limit in effect for the calendar year in which the 12-consecutive month period began.]⁶

[Option 2: The retirement allowance provided by the Association is based on the highest 36 consecutive months of Compensation Earnable ending within the plan year. The Annual Compensation Earnable Limit was \$220,000 for 2006, \$225,000 for 2007, and \$230,000 for 2008. A Member retires in May 2009. The Member has \$300,000 per year (\$25,000 per month) of Compensation Earnable during the Member's highest 36 consecutive months of Compensation Earnable for the period May 1, 2006 through April 30, 2009. The Association may not base the Member's benefits for 2009 on annual Compensation Earnable in excess of

² If the Association uses a fiscal year as its plan year, Option 2 should be used in the regulations.

³ If the Association uses the calendar year as its plan year, Option 1 should be used in the regulations.

⁴ If the Association uses a fiscal year as its plan year, Option 2 should be used in the regulations.

⁵ Each Association should pick the example or examples that apply to it.

⁶ If the Association bases the retirement allowance on the highest 12 consecutive months of Compensation Earnable, then Option 1 should be used in the regulation.

\$225,000, the average of the limits in effect for each of the three 12-consecutive month periods: the May 1, 2006 through April 30, 2007 period is capped at \$220,000, the 2006 limit; the May 1, 2007 through April 30, 2008 is capped at \$225,000, the 2007 limit; and the May 1, 2008 through April 30, 2009 is capped at \$230,000, the 2008 limit. The average of these capped amounts is the Annual Compensation Earnable Limit for determining benefits for the 2009 plan year for a member who retires in May, 2009 because that is the limit for the calendar year in which the member's average compensation earnable begins.]⁷

2. Example: Member Contributions

The refund or withdrawal benefits from Member contributions are accrued on an annual basis. The Annual Compensation Earnable Limit was \$220,000 for the 2006 calendar year; \$225,000 for the 2007 calendar year; and \$230,000 for the 2008 calendar year.

[Option 1: Since the Association's plan year corresponds to the calendar year, the Annual Compensation Earnable Limit for Member contributions was \$220,000 for the 2006 plan year; \$225,000 for the 2007 plan year; and \$230,000 for the 2008 plan year.]⁸

[Option 2: Since the Association's plan year corresponds to the fiscal year, the Annual Compensation Earnable Limit was \$220,000 for the entire plan year beginning [July] 1, 2006 and ending [June] 30, 2007; \$225,000 for the entire plan year beginning [July] 1, 2007 and ending [June] 30, 2008; and \$230,000 for the entire plan year beginning [July] 1, 2008 and ending [June] 30, 2009.]⁹

⁷ If the Association bases the retirement allowance on the highest 36 consecutive months of Compensation Earnable, then Option 2 should be used in the regulation.

⁸ If the Association uses the calendar year as its plan year, Option 1 should be used in the regulations

⁹ If the Association uses a fiscal year as its plan year, Option 2 should be used in the regulations.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

K

TAB K

CODE § 401(a)(31) & 402(c)

ROLLOVERS

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTIONS 401(a)(31) and 402(c)**

I. ISSUES

1. Direct Rollovers to Eligible Retirement Plans

Code § 401(a)(31)(A) requires a plan to allow distributees of eligible rollover distributions to elect to have that distribution directly rolled over into another eligible retirement plan. This rollover requirement has applied to the CERL since the passage of § 522(a)(1) of the Unemployment Compensation Amendment of 1992, which applies to all distributions made after December 31, 1992. The deadline for adopting a plan amendment was the last day of the first plan year beginning on or after January 1, 1994. The CERL was not amended to allow direct rollovers from the system until § 31485.15 was adopted effective January 1, 2009. However, MCERA has provided direct rollovers since 1993 to those members and spouses who qualify for direct rollovers. MCERA also makes direct rollovers available to nonspouse beneficiaries. Therefore, MCERA does not have an operational error with respect to rollovers. See Section K.1 of the enclosed Compliance Chart for additional information.

2. Eligible Retirement Plan

The Economic Growth and Tax Relief Reconciliation Act of 2001 expanded the definition of eligible retirement plan to include 403(b) plans and governmental 457(b) plans effective for distributions made after December 31, 2001. The deadline for adopting plan amendment for this change was the last day of the first plan year beginning on or after January 1, 2002. The CERL was not amended to comply with the Code § 401(a)(31)(E) definition of eligible retirement plan until § 31485.15 was adopted effective January 1, 2009. See Section K.2 of the enclosed Compliance Chart for additional information.

3. Accepting Rollovers

Under Code § 402(c), a plan may provide that it will accept rollover of eligible rollover distributions. Accepting rollover distributions is optional. Some or all of the systems that have adopted the CERL accept eligible rollover distributions. However, the CERL does not contain a provision that allows systems to accept eligible rollover distributions.

4. Domestic Relations Orders

CERL §31685.2 allows nonmembers who are a party to a domestic relations order to obtain a refund of the accumulated contributions in his or her separate account under the plan. CERL § 31685.2 is silent on the matter of rollovers so it is not clear whether alternate payees may make rollovers from a system as required by Code § 402(c) and Treasury Regulation § 1.402(c)(2), Q&A-12(a). See Section V.1 of the enclosed Compliance Chart for additional information.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

31485.15. In accordance with Section 401(a)(31) of Title 26 of the United States Code, a person who is entitled to a distribution under this chapter that is an eligible rollover distribution may elect to have all or a part of that distribution paid directly to an eligible, specified plan, subject to terms and conditions established by the board. If a person elects to have the eligible rollover distribution paid to an eligible, specified plan, the payment, when it is distributable, shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan.

Domestic Relations Orders (Unclear Provision)

31685.2. (a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.

(b) The nonmember shall file an application on a form provided by the system to obtain the refund.

(c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.

(d) The nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective.

(e) The nonmember may not cancel a refund once it has become effective.

(f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.

(g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.

(h) If the nonmember receives a refund under this section, the member may elect to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

III. PROPOSED CORRECTION

Our proposed correction is the adoption of model rollover regulations by MCERA.

PROPOSED MODEL REGULATIONS FOR IRC SECTION 402(c) ROLLOVERS

SECTION I. PURPOSE AND SCOPE

In accordance with section 31485.15 and section 31525 of the California Government Code, the regulations set forth herein are effective as of [____], 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 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 nonspouse beneficiary provisions in Section II.G.

2. Spouse

In accordance with federal law, a "Spouse" is a person who is married under California law except to the extent that such person is not treated as married under the federal Defense of Marriage Act, 1 U.S.C. § 7 to the extent required under the Code and Treasury regulations applicable to the Association.

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 Association;
- 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 nonspouse 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 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.¹

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 [OPTIONAL]²

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) an Association Member that has elected a deferred retirement.

2. Rollovers Allowed

The Association will permit an Eligible Member to make a rollover contribution to the Association for (a) a purchase of service credit, or (b) a redeposit of previously withdrawn funds plus accumulated interest.

3. Separate Accounting

The Association will separately account for all rollover contributions.

¹ Note that the 402(f) notice is only required to be given to distributees of an eligible rollover distribution, not to all Eligible Individuals who request a withdrawal. This is the way that the new IRS model 402(f) notice has been drafted. Of course this may not be pragmatic.

² The Association is not required to accept rollover contributions and rollovers can be accepted from some, but not all eligible plans. Each Association will need to specify which, if any, rollover contributions it will accept.

4. Certification to 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 that the rollover contribution is an eligible rollover distribution under the Code. The Association will not accept rollovers of any after-tax contributions 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 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 Information from Member

The Eligible Member must provide one of the following to the Association demonstrating that the source of the rollover contribution is a qualified plan: (a) a copy of the plan's most recent favorable determination letter from the Internal Revenue Service stating that the plan is tax-qualified and a written certification from the plan's administrator that the plan continues to be tax-qualified, or (b) a written and signed certification from the plan's administrator that the source of the eligible rollover distribution is a qualified plan under Code Section 401(a).

3. Additional Information Required

[OPTION ONE] The Eligible Member must provide the following additional information to the Association demonstrating that no portion of the rollover contribution contains after-tax contributions:

- a. A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution contains no after-tax contributions or earnings; or
- b. A signed certification from the transferring plan's administrator that the rollover contribution contains no after-tax contributions or earnings.

OR

[*OPTION TWO*] The Eligible Member must provide a statement signed by the Eligible Member under penalty of perjury certifying that the rollover contribution contains no after-tax contributions or earnings.

OR

[*OPTION THREE*] The Eligible Member must provide a signed certification from the transferring plan's administrator that the rollover contribution contains no after-tax contributions or earnings.

If an Eligible Member does not provide such information, the Association will not accept the 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 Information

The Eligible Member must provide the Association with a written statement from the transferring IRA custodian providing that the source of the rollover contribution is an IRA that meets the requirements of Code section 408(a) or 408(b).

3. Additional Information Required

[*OPTION ONE*] The Eligible Member must provide the following additional information to the Association demonstrating that no portion of the rollover contribution contains after-tax contributions:

- a. A statement signed under penalty of perjury by the Eligible Member certifying that the IRA contains no after-tax contributions or earnings; or
- b. If the Eligible Member cannot so certify, a signed certification from an accountant or tax advisor providing the amount of pre-tax contributions and after-tax 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.

OR

[*OPTION TWO*] The Eligible Member must provide a statement signed by the Eligible Member under penalty of perjury certifying that the IRA contains no after-tax contributions or earnings.

OR

[*OPTION THREE*] The Eligible Member must provide a signed certification from an accountant or tax advisor providing the amount of pre-tax contributions and after-tax 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 information, the Association will not accept the rollover.

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

1. 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. The Eligible Member must provide one of the following to the Association demonstrating that the source of the rollover contribution is an eligible governmental 457(b) plan or a Code section 403(b) plan: (a) a copy of the transferring plan's most recent private letter ruling from the Internal Revenue Service stating that the transferring plan qualifies as an eligible governmental 457(b) plan or a Code section 403(b) plan, as applicable, and a signed certification from the transferring plan's administrator that the transferring plan continues to be so qualified, or (b) a signed certification from the transferring plan's administrator that the rollover distribution source is an eligible governmental 457(b) plan or a Code section 403(b) plan, as applicable.

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

E. Rollover Contributions Made by Indirect Rollover

A rollover contribution to the Association may be made by a direct rollover or may be made by an indirect rollover no later than the 60th day after the Eligible Member receives the eligible rollover distribution in cash from his or her eligible retirement plan. In addition to providing the applicable documentation above in Sections III.B-D, Eligible Members making a rollover contribution with an indirect rollover must provide evidence satisfactory to the Association that the Eligible Member received the distribution within the required 60-day period.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

TAB L

CODE § 401(a)(36)

NORMAL RETIREMENT AGE

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTION 401(a)(36)**

I. ISSUES

According to Code § 401(a)(36), a pension plan may provide for payment of benefits to an employee who has attained age 62 or reached normal retirement age ("NRA") even if they have not separated from employment. This is an exception to the rule that pension benefits may only be paid after retirement.

Generally, a plan's NRA must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. See Treasury Regulation § 1.401(a)-1(b)(2)(i).

The CERL does not define NRA. However, CERL § 31672 does say members may apply for retirement benefits upon attaining age 70, which we understand as meaning the member becomes 100% vested at that time.

MCERA has not adopted a normal retirement age. See Section M of the enclosed Compliance Chart for additional information.

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

II. CURRENT PROVISIONS IN THE CERL

The CERL does not define normal retirement age.

III. PROPOSED CORRECTION

The proposed correction is for MCERA, with other '37 Act systems to ask the Legislature to enact the following amendments to the CERL and for MCERA to adopt the following model regulations. The words italicized below are the corrective changes being proposed to the CERL.

PROPOSED TAX COMPLIANCE CHANGES TO THE CERL

An act to amend Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code relating to county employees retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB __, as introduced, _____ County employees. retirement: Internal Revenue Code compliance .

It is intended that the county employees' retirement systems are to be tax qualified under the Internal Revenue Code. This status preserves the deferred treatment of federal income tax on public employer contributions to public employee pensions and ensures that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of the Internal Revenue Code.

The County Employees Retirement Law currently includes a number of provisions that are designed to maintain tax qualification for these systems. This bill would add or clarify existing provisions as needed to maintain that status.

Vote: _____

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code is amended to add the following new sections:

31485.19. (a) *A member who has not attained normal retirement age shall have a bona fide separation from service to the extent required by section 401(a) of Title 26 of the United States Code before working for the county or a district after retirement pursuant to this chapter. The board shall establish, by regulation, the criteria under which a bona fide separation is satisfied.*

(b) *Notwithstanding any other provision in this chapter, to the extent required by section 401(a) of Title 26 of the United States Code, no amount shall be paid to any member before the earlier of the date the member has attained normal retirement age or has had a bona fide separation from service.*

(c) *The board may establish normal retirement age by regulation.*

PROPOSED MODEL REGULATIONS FOR IRC SECTION 401(a)

SEVERAL ISSUES ADDRESSED

SECTION I. PURPOSE AND SCOPE

In accordance with section 31525 of the California Government Code, the regulations set forth herein are effective as of [] and reaffirm and clarify the existing practices of the [] County Employees Retirement Association (the "Association").

SECTION VI. NORMAL RETIREMENT AGE

1. Normal Retirement Age for general members is _____, or if later, the date at which a member is otherwise eligible to receive retirement benefits from the system. Normal retirement age is not later than age 70.
2. Normal Retirement Age for safety members is _____, or if later, the date at which a member is otherwise eligible to receive retirement benefits from the system. Normal retirement age is not later than age 70.
3. These normal retirement ages are based on [choose one or more: the finding by the [Association's] actuary of actual ages at retirement. the formula age which is a benefit of _____% at age _____. the earliest age at which a Member could retire, which is the age at which a substantial number of Members do retire. *what else?*]
4. The Board may change the normal retirement age determined herein to the extent required to comply with section 401(a) of Title 26 of the United States Code or for any other reasons determined by the 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.

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

M

TAB M

CODE § 401(h)

MEDICAL BENEFITS

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTION 401(h)**

I. ISSUES

1. Required Code § 401(h) Plan Language

CERL §§ 31592.2, 31592.4, 31691, 31696.1 and 31698 provide health benefits to retirees but do not contain the plan language required by Code § 401(h) and its underlying Treasury Regulations. Regulations for the operation of a system may be adopted under CERL § 31525. MCERA provides retiree health benefits under CERL §§ 31592.2 and 31592.4. MCERA has not been operating its retiree medical benefits account in compliance with the Code § 401(h) rules. Please see Tab Q for a description of the failure and proposed correction.

2. Excess Pension Earnings Used to Provide Medical Benefits

CERL § 31592.2 says that when the board of supervisors has provided for the payment of health benefits “from the county general fund or other sources” then the board of retirement “may authorize the payment of all, or a portion, of payments of the benefits described in this paragraph from the county advance reserves.” This provision is confusing. “County advance reserves” are not defined in the CERL. Furthermore, this provision does not refer to “surplus earnings” though the prior paragraph in the same section does. A common, old, reading of this section among many was that the CERL allowed surplus earnings to be used to pay for retiree health benefits. CERL § 31691 is similar. (CERL § 31691.1 allows the board of retirement to provide an increase in the pension – called by the CERL the “retirement allowance” – in lieu of paying health benefits.)

Because this reading would not comply with the requirements of section 401(h), § 31592.4 was enacted in 1992 that allows surplus earnings to substitute for pension contributions – thereby remaining in the “pension bucket” to the extent that an employer provided health benefits. In this way, the requirements of the Code would be met. Pension bucket assets would be used only for pensions, as is required. If and only if the employer provided retiree health benefits, including by making contributions to a 401(h) account, would surplus assets substitute for current pension contributions. This would meet the goals of the Code. First, pension assets would be used exclusively for pensions. Second, with separate contributions to a 401(h) accounts the Code limits on such contributions could be applied.

We realize that this program only works if it is properly executed. There must be a proper 401(h) account established that meets the requirements of the Code and this should be done by board of retirement action. Contributions to the 401(h) account must be properly identified at the time of contribution by the employer. Payments of health benefits – e.g., premiums for retirees – must all come from the 401(h) account. For example, there cannot be any “advance” from the pension assets to pay health benefits when the 401(h) account does not have sufficient funds. There cannot be any “transfers” between the surplus earnings account, which is only a type of pension reserve account, and the 401(h) account. (Transfers occur on account books, so the accounts must be maintained properly.) To the extent that this program is properly executed in this manner, we respectfully submit that it complies with the requirements of the Code.

This program is not new in the pension world. It is very much like an arrangement where an employer over-contributes to a qualified plan in one year and is given credit in the next year for these contributions, thereby reducing the second year's contributions to the pension trust. It is also almost identical to the many situations approved by the Service for funding nonqualified "excess benefit plans" in the Taft Hartley context. The Service has issued a number of rulings in the multi-employer plan area that have similar facts. In these rulings; the employers are contractually obligated to contribute a stated amount to a multiemployer plan.¹ Those contributions are made, but before they are deposited in the multiemployer plan trust, they are contributed to a nonqualified plan that pays benefits in excess of the 415 limits. Clearly, the only way that this use of contributions could happen is if the multiemployer plan trust had enough funds to make up for the reduction in current pension contributions. The Service has ruled that this program does not adversely affect the qualified status of the multiemployer plan.

These rulings apply directly to this situation. If the multiemployer plan had used its assets to directly pay for the benefits in excess of the 415 limits, the plan would not be qualified. However, that did not happen. Instead, trust assets were clearly retained in the qualified plan trust to pay only for qualified plan benefits and these assets made up for the lower pension contributions to that trust. This is the same as the arrangement for retiree health benefits under section 31594.4 of the CERL. Here, trust fund reserve assets are clearly retained in the qualified plan trust to pay only for qualified plan pension benefits and these reserve assets make up for the lower pension contributions to the trust. As long as the execution is correct, this program complies with the Code requirements.

However, the words of the CERL are not sufficiently clear with respect to the program. Therefore, we propose legislative changes to the CERL to be sure that the program is fully understood. These proposed changes are set forth in II below.

3. Long-Term Care Program

CERL § 31696.1 allows the BOR to establish a long-term care program for retirees of a system. This section does not limit the program to benefits that can be provided by a 401(h) Account, such as qualified long-term care under Code §7702(c). This provision does not meet the Code § 401(h) requirements for medical benefits. See Section O.1 of the enclosed Compliance Chart for additional information.

4. Vision Care Program

CERL § 31698 provides for a vision care program for retirees of a system. This is a health program that is subject to the Code § 401(h) requirements but the provision does not meet the Code § 401(h) requirements. See Section O.1 of the enclosed Compliance Chart for additional information.

¹ PLR 200330046, PLR 200321019, PLR 200151056, PLR 200148081, PLR 200133051, PLR 20132042, PLR 200115042, PLR 200004042, PLR 199950044, PLR 199947042, and PLR 9747033.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

1. Medical Benefits from Retirement Plan (Unclear Provisions)

31592.2. In any county, earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies in interest earnings in other years, losses on investments, and other contingencies, except that, when such surplus exceeds 1 percent of the total assets of the retirement system, the board may transfer all, or any part, of such surplus in excess of 1 percent of the said total assets into county advance reserves for the sole purpose of payment of the cost of the benefits described in this chapter.

Where the board of supervisors has provided for the payment of all, or a portion, of the premiums, dues, or other charges for health benefits, Medicare, or the payment of accrued sick leave at retirement to or for all, or a portion, of officers, employees, and retired employees and their dependents, from the county general fund or other sources, *the board of retirement may authorize the payment of all, or a portion, of payments of the benefits described in this paragraph from the county advance reserves.*

31592.4. (a) Notwithstanding Article 5.5 (commencing with Section 31610) and Article 8.6 (commencing with Section 31694), the amount of *excess earnings available at the end of a fiscal year of the retirement fund, shall, subject to the limitations in this section, be treated in the immediately succeeding fiscal year, for all purposes under this chapter, as appropriations, transfers, and contributions made to the retirement fund by the county and districts. That treatment shall be solely for the purposes of meeting the applicable requirements of Section 401 of the Internal Revenue Code of the United States. That treatment shall also occur only to the extent that, in the immediately succeeding fiscal year, the county and districts pay for, or otherwise make reimbursement of, health benefits for members heretofore or hereafter retired and their dependents.* For purposes of this section, "excess earnings" means earnings of the retirement fund at the end of any fiscal year that exceed the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. The board of supervisors and the board of retirement may take any actions otherwise authorized by law, necessary to ensure that the program provided by this section complies with all applicable federal and state income tax laws.

(b) This section shall not be operative in any county until the board of supervisors and the board of retirement of the county, by resolution adopted by a majority vote of each board, make this section operative in the county.

(c) Nothing in this section is intended to, or should be construed to, affect the validity of any agreement entered into by a county and a retirement association whereby a county has agreed to provide and fund a health insurance program for retired employees and their dependents for hospital services, medical services, dental services, and optical services, prior to the effective date of this section.

(d) In any county in which this section becomes operative, the payments provided pursuant to this section shall be in lieu of any similar payments which could be made

pursuant to Section 31592.2 and *no payments shall be made pursuant to Section 31592.2 for all, or a portion, of the premiums, dues, or other charges for health benefits for retired employees and their dependents.*

31691. (a) The board of supervisors of any county by ordinance, or the governing body of any district under the County Employees Retirement Law, by ordinance or resolution, may provide for the contribution by the county or district from its funds and not from the retirement fund, toward the payment of all or a portion of the premiums on a policy or certificate of life insurance or disability insurance issued by an admitted insurer, or toward the payment of all or part of the consideration for any hospital service or medical service corporation, including any corporation lawfully operating under Section 9201 of the Corporations Code, contract, or for any combination thereof, for the benefit of any member heretofore or hereafter retired or his or her dependents. At least one of these plans shall include free choice of physician and surgeon.

(b) The benefits provided by this section are in addition to any other benefits provided by this chapter.

(c) *The board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member for one year prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for the benefits enumerated herein from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.* The board may provide for the benefits enumerated from like sources when the board of supervisors or the governing body of a district has elected to provide these benefits to its active employees, even though the benefits are not provided to those who have retired from the service of the county or district.

(d) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

31691.1. (a) *In lieu of the benefits prescribed by subdivision (d) of Section 31691, the board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for an equivalent increase in allowance from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. Any benefit provided by this section shall be subject to Section 31692.*

(b) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

31694. (a) The board of supervisors of a county or the governing body of a district or other public entity may, by ordinance or resolution and with the agreement of the board

of retirement, provide for the contribution of funds by the county, a district, or other public entity into a Post-Employment Benefits Trust Account. The retirement system may establish the Post-Employment Benefits Trust Account as a part of the retirement fund. The Post-Employment Benefits Trust Account shall be established for the sole purpose of funding the benefits provided under a post-employment group health, life, welfare, or other supplemental benefits plan or plans established and maintained by the county or district, which plan or plans may provide for self-insured coverage or the payment of all or a portion of the premiums on one or more insurance contracts or health care service plan contracts for retired employees of the participating county, district, or other public entity, and their qualified spouses, dependents and beneficiaries.

(b) Contributions to the Post-Employment Benefits Trust Account may include the proceeds of debt issued by the county, a district, or other public entity solely for the purpose of funding post-employment health, life, welfare, or other supplemental benefits.

(c) The post-employment benefits provided with the funds contributed to the Post-Employment Benefits Trust Account are in addition to any other benefits provided under this chapter.

(d) (1) Except as described in subdivision (b) of Section 31694.1, the assets of the retirement fund may not be used, directly or indirectly, to pay the cost of any benefits provided through the Post-Employment Benefits Trust Account or, except to the extent allowed by federal tax law, to pay any direct or indirect cost of administering the Post-Employment Benefits Trust Fund.

(2) Except as described in subdivision (c) of Section 31694.1, funds in the Post-Employment Benefits Trust Account may not be used, directly or indirectly, to pay the cost of any other benefits provided under this chapter.

31694.1. (a) The retirement system shall separately account for the funds contributed to the Post-Employment Benefits Trust Account by each participating employer and the earnings and expenses related to the investment and administration of those funds.

(b) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, shall have sole, exclusive, and plenary authority and fiduciary responsibility over the investment of the funds in the Post-Employment Benefits Trust Account, consistent with Sections 31594 and 31595, and as provided for in Section 17 of Article XVI of the California Constitution. The board of retirement or board of investments may invest funds in the Post-Employment Benefits Trust Account with those of the retirement system, to the extent allowed by federal tax laws. The investment earnings and investment expenses attributable to the investment activity of the Post-Employment Benefits Trust Account shall be accounted for separately from the investment earnings and expenses of the retirement fund.

(c) The funds in and investment earnings of the Post-Employment Benefits Trust Account shall be used to pay the reasonable costs related to investment expenses and administration of the Post-Employment Benefits Trust Account to the extent allowed by federal tax law. Those expenses shall not be deemed to be an investment or administrative expense of a retirement system under this chapter.

(d) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, may establish rules and procedures governing the investments and administration of the Post-Employment Benefits Trust Account. The board of retirement or the board of investments shall determine the rate of interest to credit the funds in the Post-Employment Benefits Trust Account.

(e) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, is authorized to take any and all actions necessary to establish and administer the Post-Employment Benefits Trust Account in compliance with applicable federal tax laws or other legal requirements.

(f) The board of retirement, or the board of retirement acting jointly with a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, and a participating employer in the Post-Employment Benefits Trust Account shall establish, by written agreement, the respective roles and responsibilities of the retirement system and the participating employer with respect to the administration and investment of the Post-Employment Benefits Trust Account, consistent with Section 17 of Article XVI of the California Constitution. That agreement shall include, but is not limited to, funding, distribution, expenditure, actuarial, accounting, and reporting considerations, and any applicable investment parameters. The board may, in its discretion, authorize an employer to transfer assets into or out of the Post-Employment Retirement Account, however, any transfer of assets shall comply with the terms of the contract between the employer and the board, satisfy requirements under applicable rules of the Governmental Accounting Standards Board, and satisfy the requirements of federal tax law. Once the investment parameters are established, the board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, shall have sole control over the investment activity of the Post-Employment Benefits Trust Account as described in subdivision (b). Upon agreement and authorization of the board of retirement and the governing body of a participating employer, the retirement system may administer a post-employment health, life, welfare, or other supplemental benefit plan sponsored by the participating employer and funded through the Post-Employment Benefits Trust Account.

(g) In accordance with procedures established in the written agreement described in subdivision (f), the participating employer may elect to terminate participation in the Post-Employment Benefits Trust and instruct the retirement system to either (1) transfer the funds held in the Post-Employment Benefits Trust Account to a successor trustee named by the employer, or (2) disburse the trust assets in accordance with subdivision (i). In addition, the board of retirement may terminate the participation of a participating employer in the Post-Employment Benefits Trust Account if either:

(1) The board of retirement finds that the participating employer is unable to satisfy the terms and conditions required by this article, the rules and procedures established by the board, or the participation agreement between the participating employer and the board of retirement.

(2) The board of retirement elects to terminate the Post-Employment Benefits Trust Account.

(h) If the board of retirement terminates the participation of an employer in the Post-Employment Benefits Trust Account, as described in paragraph (1) or (2) of subdivision (g), the funds attributable to that employer shall remain in the Post-Employment Benefits Trust Account, for the continued payment of post-employment benefits for current and future participants and the costs of administration and investment.

(i) If the board of retirement elects to terminate the Post-Employment Benefits Trust Account, the retirement system shall disburse the funds in Post-Employment Benefits Trust Account in the following order and manner:

(1) The retirement system shall retain an amount sufficient to pay for the post-employment benefits for participants in the post-employment benefits plan or plans provided by the former participating employer.

(2) The retirement system shall retain an amount sufficient to pay reasonable administrative and investment costs described in this section.

(3) After the amounts in paragraphs (1) and (2) have been retained or disbursed, the retirement system shall pay any remaining funds to the former participating employer or employers.

31694.2. An employer who elects to participate in the Post-Employment Benefits Trust Account shall be required to establish, fund, and apply distributions from the Post-Employment Benefits Trust Account, and administer a post-employment health, life, welfare, or other supplemental benefit plan or plans funded through the Post-Employment Benefits Trust Account, pursuant to applicable federal tax requirements or other legal provisions. An employer may expressly delegate its responsibilities under this section to the retirement system as described in subdivision (f) of Section 31694.1, to the extent allowed by federal tax laws.

31694.3. (a) The board of supervisors of a county, or the governing body of a district, may establish, by resolution or ordinance, its own trust for the sole purpose of funding any post-employment benefits provided under a group health, life, or other welfare benefits plan or plans established and maintained by that county or district.

(b) The board of retirement and, if applicable, the board of investments, may, with the agreement of the county or district, act as one or more of the following for that employer-established trust: trustee, third-party administrator, or investment manager. The board of retirement and, if applicable, the board of investments, may enter a trust agreement, third-party administrative services agreement, investment manager agreement, or other appropriate agreement with the county or district, which shall establish the respective roles and responsibilities of the parties with respect to the administration and investment of the employer-established trust. That agreement shall provide for the manner and method of payment for the reasonable costs related to investment expenses for, and administration of, the employer-established trust. Those expenses shall not be deemed to be an investment or administrative expense of a retirement system under this chapter.

(c) The county or district may contract with an entity other than the board of retirement or board of investments to act as trustee, third-party administrator, or investment manager for the trust.

(d) Contributions to the employer-established trust may include the proceeds of debt issued by the county or district solely for the purpose of funding post-employment health, life, or other welfare benefits.

2. ARTICLE 8.8 LONG-TERM CARE GROUP INSURANCE (Unclear Provisions)

31696.1. (a) The board of retirement may provide a long-term care insurance program for retired members and their spouses, their parents, and their spouses' parents.

(b) Subject to Section 31696.5, the board may permit active members and their spouses, their parents, and their spouses' parents to enroll in the long-term care insurance program.

(c) The long-term care insurance plan shall be made available periodically during open enrollment periods determined by the board.

(d) The board shall award contracts to carriers who are qualified to provide long-term care benefits.

(e) The long-term care insurance plan shall include home, community, and institutional care and shall provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code and shall meet those requirements set forth in the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). However, the Department of Managed Health Care shall have no jurisdiction over the insurance plan authorized by this article.

(f) Notwithstanding subdivision (a), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria approved by the board.

(g) The board shall approve eligibility criteria for enrollment, approve appropriate underwriting criteria for potential enrollees, approve the scope of covered benefits, approve the criteria to receive benefits, and approve any other standards as needed.

31696.2. (a) The full cost of enrollment in a long-term care insurance plan shall be paid by the enrollees.

(b) The long-term care insurance plan shall not become part of, or subject to, the retirement or health benefits programs administered by the system.

31696.3. (a) The board shall establish a trust fund designated as the Long-Term Care Fund for the purpose of the payment of the costs and administration of the long-term care plan. The Long-Term Care Fund shall be held for the exclusive benefit of enrollees and the payment of the costs and administration of the program.

(b) The board shall have exclusive control of the administration and investment of the Long-Term Care Fund, except that in a county having a board of investments, the board

of investments shall have exclusive control of the investment of the fund. Funds in the Long-Term Care Fund shall be invested pursuant to the law governing the investment of the retirement fund.

(c) Income, of whatever nature, earned on the Long-Term Care Fund shall be credited to the fund.

31696.4. The board is authorized to recover the administrative costs of the long-term care insurance program from insurance carriers and premiums paid by enrollees.

31696.5. Subdivision (b) of Section 31696.1 shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make that subdivision applicable in the county.

3. ARTICLE 8.9 VISION CARE (Unclear Provisions)

31698. This article shall be known and may be cited as the County Retirement System Vision Care Program.

31698.1. A member who retires from a county retirement system covered by this chapter may enroll in a vision care program offered pursuant to this article subject to meeting the eligibility requirements established for the program.

31698.2. Each retired member that elects to participate in the program shall be solely responsible for the payment of premiums.

31698.3. The benefits in this article are in addition to any other benefits provided in this chapter.

31698.4. The sponsor of the vision care program may contract with a third-party administrator to provide vision care to the retired member, his or her survivors, and his or her eligible dependents.

III. PROPOSED CORRECTION

The proposed correction is for MCERA with other '37 Act systems to ask the Legislature to enact the following CERL changes and to adopt model regulations (if applicable). The words italicized below are the corrective changes being proposed to the CERL.

PROPOSED TAX COMPLIANCE CHANGES TO THE CERL

An act to amend Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code relating to county employees retirement.

LEGISLATIVE COUNSEL'S DIGEST

A.

AB _____, as introduced, _____ County employees. retirement: Internal Revenue Code compliance.

It is intended that the county employees' retirement systems are to be tax qualified under the Internal Revenue Code. This status preserves the deferred treatment of federal income tax on public employer contributions to public employee pensions and ensures that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of the Internal Revenue Code.

The County Employees Retirement Law currently includes a number of provisions that are designed to maintain tax qualification for these systems. This bill would add or clarify existing provisions as needed to maintain that status.

Vote: _____

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 3. Sections 31592.2, 31592.4, 31691, and 31691.1 of the Government Code are amended to read as follows:

31592.2 In any county, earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies in interest earnings in other years, losses on investments, and other contingencies, except that, when such surplus exceeds 1 percent of the total assets of the retirement system, the board may transfer all, or any part, of such surplus in excess of 1 percent of the said total assets into county advance reserves for the sole purpose of payment of the cost of the benefits described in this chapter. Where the board of supervisors has provided for the payment of all, or a portion, of the premiums, dues, or other charges for health benefits, Medicare, or the payment of accrued sick leave at retirement to or for all, or a portion, of officers, employees, and retired employees and their dependents, from the county general fund or other sources, the board of retirement may authorize the payment of all, or a portion, of payments of the benefits described in this paragraph from the county advance reserves. *Any such payment shall comply with the requirements of section 401 of Title 26 of the United States Code. Payment may be made directly from the county advance reserves for the benefits described in section 31691.1.*

~~31592.4~~ (a) ~~Notwithstanding Article 5.5 (commencing with Section 31610) and Article 8.6 (commencing with Section 31694), the~~ The amount of excess earnings available at the end of a fiscal year of the retirement fund, shall, subject to the limitations in this section, be treated in the immediately succeeding fiscal year, for all purposes under this chapter, as appropriations, transfers, and contributions made to the retirement fund by the county and applicable districts. ~~That treatment shall be solely for the purposes of meeting the applicable requirements of Section 401 of the Internal Revenue Code of the United States. That treatment shall also occur only to the extent that, in the immediately succeeding fiscal year, the county and applicable districts pay for an equal amount of, or otherwise make reimbursement of, health benefits for members heretofore or hereafter retired and their dependents or make contributions in an equal amount to an account established under section 401(h) of Title 26 of the United States Code solely for the purpose of providing health benefits for retired members, their spouses and their dependents and for the associated administrative and investment expenses.~~

(b) For purposes of this section, "excess earnings" means earnings of the retirement fund at the end of any fiscal year that exceed the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(c) The board of supervisors ~~and or~~ the board of retirement ~~may~~ *shall* take any actions ~~otherwise authorized by law necessary or appropriate~~ to ensure that the program provided by this section complies with all applicable federal and state income tax laws *including but not limited to establishing rules and procedures for establishing and maintaining an account under such section 401(h).*

(d) *In accordance with such section 401(h), (i) the retirement system must specify the medical benefits which will be available and must set out the amount that will be paid; (ii) medical benefits must be subordinate to the retirement benefits, when added to any life insurance benefits; (iii) a separate account must be maintained for contributions to fund the medical benefits; (iv) the funds in such account may be invested with the funds for retirement benefits and the earnings must be allocated to each account in a reasonable manner; (v) amounts contributed for medical benefits must be reasonable and ascertainable; (vi) no part of the medical benefits account may be used for or diverted to any purpose other than providing medical benefits and paying necessary or appropriate expenses for the administration of the medical benefits account; (vii) any amounts remaining in the medical benefits account after satisfaction of all medical benefits liabilities for all members, spouses and dependents must be returned to the employer; (viii) if a member's interest in the medical benefits account is forfeited prior to plan termination, an amount equal to the "forfeiture must reduce employer contributions to fund the account.*

(e) *Except to the extent allowed by section 401 and section 420 of Title 26 of the United states Code, no assets shall be transferred or otherwise paid from the funds held by the retirement system for retirement benefits to a medical benefits account. No assets shall be transferred or otherwise paid from a medical benefits account to the funds held by the retirement system for retirement benefits.*

~~(b)~~ (f) This section shall not be operative in any county until the board of supervisors and the board of retirement of the county, by resolution adopted by a majority vote of each board, make this section operative in the county.

~~(e)~~ (g) Nothing in this section is intended to, or should be construed to, affect the validity of any agreement entered into by a county and a retirement association whereby a county has agreed to provide and fund a health insurance program for retired employees and their dependents for hospital services, medical services, dental services, and optical services, prior to the effective date of this section.

~~(d)~~ (h) ~~In any county in which this section becomes operative, the payments provided pursuant to this section shall be in lieu of any similar payments which could be made pursuant to Section 31592.2 and no payments shall be made pursuant to Section 31592.2 for all, or a portion, of the premiums, dues, or other charges for health benefits for retired employees and their dependents. This section establishes a method of providing health benefits for retired members, spouses and their dependents to the extent allowed under section 31592.2 and section 31691. No duplicate benefits shall be authorized by this section.~~

(i) This section may be made applicable in any county that has adopted Article 5.5 and in that case the Supplemental Retiree Benefits Reserve shall be substituted for the excess earnings described in this section. This section also may be made applicable to any arrangement established under Article 8.6.

31691 (a) The board of supervisors of any county by ordinance, or the governing body of any district under the County Employees Retirement Law, by ordinance or resolution, may provide for the contribution by the county or district from its funds and not from the retirement fund, toward the payment of all or a portion of the premiums on a policy or certificate of life insurance or disability insurance issued by an admitted insurer, or toward the payment of all or part of the consideration for any hospital service or medical service corporation, including any corporation lawfully operating under Section 9201 of the Corporations Code, contract, or for any combination thereof, for the benefit of any member heretofore or hereafter retired or his or her dependents. At least one of these plans shall include free choice of physician and surgeon.

(b) The benefits provided by this section are in addition to any other benefits provided by this chapter.

(c) The board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member for one year prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for the *hospital or medical* benefits enumerated herein in subsection (a) from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. The board may provide for the benefits enumerated from like sources when the board of supervisors or the governing body of a district has elected to provide these benefits to its active employees, even though the -benefits are not provided to those who have retired from the service of the county or district. *Hospital and medical benefits provided under this section shall be provided in compliance with section 401(h) of Title*

26 of the United States Code. They may also be provided in compliance with section 31592.2.

(d) Except in a county of the first class, upon adoption by any county that has adopted Article 5.5, ~~providing benefits pursuant to this section, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618 shall be substituted for the excess earnings described in subsection (c) above.~~

31691.1 (a) In lieu of the benefits prescribed by subdivision (d) of Section 31691, the board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for an equivalent increase in allowance from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. Any benefit provided by this section shall be subject to Section 31692.

(b) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

SECTION 4. Section 31694.6 of the Government Code is added to read as follows:

31694.6. (a) *Notwithstanding anything to the contrary in this Article, if the Post-Employment Benefits Trust Account established under Section 31694 is established as a part of the retirement fund then it shall be established for the sole purpose of providing for health benefits for retired members, their spouses and their dependents and shall comply with all requirements of section 401(h) of Title 26 of the United States Code, including the limitations on contributions in section 401(h), as applicable.*

(b) *The board of supervisors or the board of retirement shall take any actions necessary or appropriate to ensure that the program provided by this section complies with all applicable federal and state income tax laws including but not limited to establishing rules and procedures for establishing and maintaining an account under such section 401(h).*

(c) *No assets shall be transferred or otherwise paid from the funds held by the retirement system for retirement benefits to a medical benefits account. No assets shall be transferred or otherwise paid from a medical benefits account to the funds held by the retirement system for retirement benefits.*

SECTION 5. Section 31696.3 of the Government Code is amended to read as follows:

31696.3 (a) The board shall establish a trust fund designated as the Long-Term Care Fund for the purpose of the payment of the costs and administration of the long-term care plan. The Long-Term Care Fund shall be held for the exclusive benefit of enrollees and the payment of the costs and administration of the program.

(b) The board shall have exclusive control of the administration and investment of the Long-Term Care Fund, except that in a county having a board of investments, the board of investments shall have exclusive control of the investment of the fund. Funds in the Long-Term Care Fund shall be invested pursuant to the law governing the investment of the retirement fund.

(c) Income, of whatever nature, earned on the Long-Term Care Fund shall be credited to the fund.

(d) If the Long-Term Care Fund is intended to be a part of the retirement system trust fund, the operation of the Long-Term Care Fund, including but not limited to its funding, governance, investment of assets, allocation of income, and payment of benefits, shall comply with the requirements of section 401(h) of Title 26 of the United States Code, to the extent required by such Title. If the Long Term Care Fund is intended to be separate from and not a part of the retirement system, then the assets shall not be commingled for investment with the assets of the retirement system and shall constitute a separate fund with a trust that is separate from the funds and trust of the retirement system. The board shall indicate as a part of establishment of the Long-Term Care Fund whether such fund is intended to be a part of or separate from the retirement system.

SECTION 6. Section 31698.5 of the Government Code is added to read as follows:

31698.5 *If the vision care program is intended to be part of the retirement system trust fund, the operation of the vision care program, including but not limited to its funding, governance, investment of assets, allocation of income, and payment of benefits, shall comply with the requirements of section 401(h) of Title 26 of the United States Code, to the extent required by such Title. If the vision care program is intended to be separate from and not a part of the retirement system, then no assets attributable to such Program shall be commingled for investment with the assets of the retirement system and the program shall be separate from the funds and trust of the retirement system. The sponsor of the vision care program shall indicate as part of the establishment of the Program whether such fund is intended to be a part of or separate from the retirement system.*

**PROPOSED MODEL REGULATIONS FOR IRC SECTION 401(h)
MEDICAL BENEFITS ACCOUNTS**

SECTION I. GENERAL RULES

A. Purpose and Effective Date

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

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

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

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

A. General Rule

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

B. Compliance with Provisions of the Code

1. The retirement system must specify the medical benefits which will be available and must set out the amount that will be paid for those benefits.
2. Medical benefits must be subordinate to the retirement benefits, when added to any life insurance benefits. Contributions shall be limited to the extent necessary to ensure that the retiree health benefits are subordinate to the retirement benefits provided by the system as required by Code § 401(h).
3. A separate account must be maintained for contributions to fund the medical benefits.
4. Amounts credited to the 401(h) account may be invested with other system funds set aside for retirement purposes, without identification of which investments are allocable to each account. However, earnings on each account shall be allocated to each in a reasonable manner.

5. Amounts contributed for medical benefits must be reasonable and ascertainable. The county will, at the time it makes a contribution to the system, designate in writing to the system that portion of the contribution allocable to the 401(h) account to be used solely for health benefits.
6. No part of the medical benefits account may be used for or diverted to any purpose other than providing medical benefits and paying necessary or appropriate expenses for the administration of the medical benefits account.
7. No retiree health benefits provided under the 401(h) account will discriminate in favor of highly compensated employees.
8. Any amounts remaining in the medical benefits account after satisfaction of all medical benefits liabilities for all members, spouses and dependents must be returned to the employer.
9. If any member's interest in the medical benefits account is forfeited prior to plan termination, an amount equal to the forfeiture must reduce employer contributions to fund the account.
10. Separate accounts are not required for key employees because no member of the system is a key employee under the definitions of the Code.

C. Compliance with the CERL

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

SECTION III. DEFINITION OF COUNTY ADVANCE RESERVE

County advance reserve means the account which records contributions to the system made by the county and additions to and subtractions from that account. For purposes of this regulation county advance reserve includes a similar reserve, if any, held for a district that contributes to the system. A county advance reserve account records a portion of all of the assets held by the system solely to provide for retirement benefits (including disability, death and other ancillary benefits) of all Members and to provide for reasonable administrative expenses, along with other accounts that record assets used solely for these purposes including but not limited to Member contribution accounts and other reserve accounts. A transfer between any of these accounts is a transfer for

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

recording purposes only and is not a transfer between accounts that are used for retirement benefits and for any other purpose.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

N

TAB N

CODE § 414(u)

USERRA MAKE-UP CONTRIBUTIONS

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTION 414(u)**

I. ISSUES

Section 1704(n)(1) of the Small Business Job Protection Act of 1996 added Code § 414(u)(1) which requires that make-up contributions must be permitted during the period that begins on the date of the reemployment and continues for five years, or if less, three times the period of military service. The deadline for amending the CERL for USERRA was December 31, 2001. Code § 414(u) requires defined benefit plans with mandatory employee contributions to allow members reemployed after a period of qualified military service to purchase past service credit. If the plan does not have mandatory employee contributions, the plan must automatically credit the reemployed member with service credit for the period of military service. The make up contributions are not to be taken into account in applying the Code § 415 limits in the year that contributions are made, but for the year the contributions relate to. The CERL § 31649.5 allows reemployed members to purchase service credit. Section 31649.5, however, is not mandatory and only applies in counties that adopt the optional provision. Separately, CERL § 31649 provides for mandatory contributions upon returning from qualified military service but the two sections together are not clear.

CERL §31649.5 applies to MCERA.

See Section S of the enclosed Compliance Chart for additional information.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

31649. (a) Any member who resigns to enter and does enter the armed forces of the United States on a voluntary or involuntary basis, and within 90 days after the termination of that service under honorable conditions, reenters county service, or

(b) Any member who obtains a leave of absence to enter and does enter the armed forces of the United States on a voluntary or involuntary basis, and within one year after the termination under honorable conditions of leave of absence reenters county service, if he or she has not contributed to the retirement fund the total percentage of his or her compensation earnable due pursuant to Section 31461 due under this chapter for the entire period during which he or she was out of county service and in military service, may, not more than 90 days after his or her reentrance into county service, file with the board his or her election that no further contributions be deducted from his or her compensation except contributions due because of current service.

(c) A member who reenters county service under either (a) or (b) above may be allowed up to five years credit for vesting in the system.

31649.5. (a) *Notwithstanding Section 31649, any member who resigned, or obtained a leave of absence, to enter and did enter the armed forces of the United States on a voluntary or involuntary basis and returned to county service within one year after separation therefrom, under honorable conditions, shall receive credit for service and prior service for all or any part of his or her military service, if, before retirement from the county, he or she contributes what he or she would have paid to the fund based on his or her compensation earnable pursuant to Section 31461 at the time he or she resigned or received the leave of absence, together with regular interest thereon, and if, when he or she contributes, the military service is not a basis for present or future military retirement pay.*

(b) *This section shall not be operative in any county until the board of supervisors so orders.*

III. PROPOSED CORRECTION

The proposed correction is for MCERA, with other '37 Act systems, to ask the Legislature to enact the following CERL changes.

PROPOSED TAX COMPLIANCE CHANGES TO THE CERL

An act to amend Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code relating to county employees retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB __, as introduced, _____ County employees. retirement: Internal Revenue Code compliance.

It is intended that the county employees' retirement systems are to be tax qualified under the Internal Revenue Code. This status preserves the deferred treatment of federal income tax on public employer contributions to public employee pensions and ensures that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of the Internal Revenue Code.

The County Employees Retirement Law currently includes a number of provisions that are designed to maintain tax qualification for these systems. This bill would add or clarify existing provisions as needed to maintain that status.

Vote: _____

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 3. Section 31649.5(b) is deleted.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

TAB O

CODE § 415

ANNUAL LIMITS

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTION 415**

I. ISSUES

1. Drafting, in general

The CERL incorporates section 415 by reference. It also incorporates the grandfather election of section 415(b)(10). The CERL does not set out with specificity the detailed provisions of section 415 that are required or optional under section 415. For example, the actuarial equivalence factors are not explicitly stated in the CERL. Also, for example, the CERL does not specify which plan is "primary" in case a member participates in more than one DB plan of the employer.

2. QDRO's and Alternate Payees

The CERL allows the alternate payee under a QDRO to redeposit a refund of member contributions and also to purchase service credit. It is not clear whether this action is allowed by section 415.

3. COLAs

The CERL allows the system governing board to provide supplemental cost-of-living-adjustments (COLAs) on a year by year basis. It is not clear if this qualifies for the exception to the multiple annuity starting date rules, even if the supplemental COLA has been provided year after year.

4. Defined Contribution Limits

While the benefits provided under the CERL are defined benefits it is possible that some benefits could be subject to the defined contribution limits. For example, the CERL allows the system governing board to establish a supplemental benefit with approval of the county governing board and that benefit could be provided under a defined contribution plan. Also, for example, after-tax member contributions to the system (other than contributions used to purchase permissive service credit tested under section 415(n)) are subject to the defined contribution limits. The application of the defined contribution limits is unclear under the CERL.

MCERA is operating in compliance with the Code § 415 requirements. MCERA monitors contributions and benefits to make sure none are made in excess of the Code § 415 limits and also send their calculations to the system's actuaries for verification.

II. CURRENT CERL PROVISIONS

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

1. General Code § 415 Provisions¹

CHAPTER 3.9 INTERNAL REVENUE CODE COUNTY COMPLIANCE AND REPLACEMENT BENEFITS PROGRAM §§ 31899-31899.9

31899. The purpose of this chapter is to ensure the federal tax-exempt status of the county employees' retirement systems, to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions, and to ensure that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of Section 415 of the Internal Revenue Code.

To achieve this purpose, this chapter incorporates certain pension payment limitations and elects the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code. Also, this chapter provides for certain replacement benefits.

31899.1. (a) The definitions in Chapter 3 (commencing with Section 31450) of this part shall apply to this chapter.

(b) The term "Internal Revenue Code" includes all regulations, revenue rulings, notices, and revenue procedures issued by the Internal Revenue Service.

31899.2. (a) *In accordance with Section 31899.3, the retirement benefits for any person who for the first time became a member of the system on or after January 1, 1990, shall be subject to the payment limitations of Section 415 of the Internal Revenue Code. The retirement benefits for any person who became a member of the system before January 1, 1990, also shall be subject to the payment limitations of Section 415 of the Internal Revenue Code to the extent that those benefits are not exempt from those limitations under the "grandfather" election that has been made under that section and this section.*

(b) *The "grandfather" election in Section 415(b)(10) of the Internal Revenue Code is hereby made. All members of a retirement system who joined the system prior to January 1, 1990, are exempt from the Section 415 limits to the extent permitted by the Internal Revenue Code.*

(c) This section does not apply in a county of the first class as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, which county is instead subject to Article 2.1 (commencing with Section 31510) of Chapter 3.

31899.3. (a) Notwithstanding any other provision of law, the retirement rights conferred by this chapter and by Chapter 3 (commencing with Section 31450) of this part upon any person who for Revenue Code upon benefits that may be paid by public retirement

¹ This provision applies to 19 of the 20 county systems. Similar language applies to the other system.

systems. That person may not have any retirement right or benefit that exceeds those limitations, and no retirement right or benefit may accrue to or vest in that person under Chapter 3 (commencing with Section 31450) that exceeds those limitations. That person may, however, have retirement rights and benefits under the replacement benefits program established under this chapter.

(b) Each retirement board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution, prior to employment, to each person who may become a member and to each person who for the first time becomes a member on or after January 1, 1990.

(c) Chapter 3 (commencing with Section 31450) shall be construed as if it included this section.

(d) This section does not apply in a county of the first class as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, which county is instead subject to Article 2.1 (commencing with Section 31510) of Chapter 3.

31899.4. (a) Each county and district shall provide a program to replace the benefits that are limited by Section 415 of the Internal Revenue Code for members whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Section 31538. The replacement benefits program shall provide benefits that, together with the benefits provided by the retirement system, are the same as, and may not exceed, the benefits that would be paid by the retirement system but for the application of the limits of Section 415. Notwithstanding the foregoing, the county or district may modify its replacement benefits program and may add, modify, or eliminate any replacement benefits, as necessary, to carry out the purpose of this chapter. A replacement benefit may not be reduced if the reduction would impair the vested rights of any person.

(b) Each county shall establish and administer its own replacement benefits program for members whose retirement benefits are limited by Section 415 of the Internal Revenue Code.

(c) A county may, pursuant to a contract with a district, agree to administer the district's replacement benefits program for the district's members whose retirement benefits are limited by Section 415 of the Internal Revenue Code. The county may charge each district a reasonable fee for administering the district's program and the county and district may agree on any other conditions relating to that administration. If a district does not contract with the county to administer its replacement benefits program, it shall establish and administer its own replacement benefits program.

(d) Upon the recommendation of the retirement system's actuary, and in accordance with its obligation to recommend county and district contribution rates under Sections 31453 and 31453.5, the board shall adjust the contributions required to be made by a county or district to the extent that benefits are payable under a replacement benefits program of that county or district.

(e) The county, and any district that establishes and administers its own program, shall enact an ordinance or prescribe regulations or other written documentation setting forth the terms of its replacement benefits program.

(f) Notwithstanding any other provision of this chapter, a county of the first class, as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, is not required to provide replacement benefits to any member under this section if that member participates in General Plan F or Safety Plan F under Article 2.1 (commencing with Section 31510) of Chapter 3.

31899.5. Each county, and each district that establishes its own replacement benefits program, shall administer the replacement benefits program established by it pursuant to this chapter. The board may, pursuant to an agreement with the county or the district that establishes its own program, assist in the administration of the replacement benefits program to the extent permitted under the Internal Revenue Code.

31899.6. If the Internal Revenue Service determines that any provision of Chapter 3 (commencing with Section 31450) of this part or this chapter cannot be given effect without placing a retirement system administered under this chapter or Chapter 3 (commencing with Section 31450) of this part out of conformity with Section 415 of the Internal Revenue Code, that provision, only to the extent that it causes that nonconformity and only with respect to the affected parties shall become inoperative with respect to the payment of benefits pursuant to Chapter 3 (commencing with Section 31450) of this part, as of the effective date of the determination. The retirement board shall notify the Secretary of State of inoperation under this section.

31899.7. (a) If Section 415 of the Internal Revenue Code is amended to exclude public retirement systems, or if the application of Section 415 of the Internal Revenue Code to public retirement systems is invalidated by the final decision of an appellate court of proper jurisdiction, all sections of this chapter, except this section, shall become inoperative as of the effective date of that amendment or decision. The retirement board shall immediately notify the Secretary of State whenever any provision of this chapter becomes inoperative pursuant to this section.

(b) Whenever all sections of this chapter, except this section, become inoperative pursuant to this section, and to the extent not prohibited by the Internal Revenue Code, the retirement board, county, and districts shall do all of the following:

(1) Remove the pension limitations imposed by Section 415 of the Internal Revenue Code for prospective payments to annuitants.

(2) Eliminate the replacement benefits, and pay benefits that are due under the system to the affected annuitants without regard to any limitations of Section 415 of the Internal Revenue Code.

(3) Take any and all other actions they deem necessary and feasible.

31899.8. It is the sole intent of the Legislature, in enacting this chapter, to fully comply with the provisions of the Internal Revenue Code that apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the county employees' retirement systems, to elect the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code, and to require that each county and district provide benefits that replace the

benefits that are limited by Section 415 of the Internal Revenue Code for affected members of the county employees' retirement systems.

The Legislature finds and declares that all costs of local public agencies and local public retirement systems of complying with Section 415 of the Internal Revenue Code are a federal mandate within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2, as construed in *City of Sacramento v. State of California* (50 Cal. 3d 51).

It is the intent of the Legislature that this chapter not be construed to impose upon local public agencies that are maintaining county retirement systems pursuant to Chapter 3 (commencing with Section 31450) of this part, state-reimbursable, state-mandated local program benefit costs within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2.

If either the Commission on State Mandates or a court determines that this chapter imposes upon any local agency, state-mandated local program benefit costs, notwithstanding any other provision of law, no reimbursement therefor shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 or from any other state fund.

31899.9. The Legislature reserves the power and right to amend this chapter, as needed to effect its purposes. This chapter shall be controlling over any memorandum of understanding reached between employers and employees pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

2. Alternate Payee Redeposits and Purchase of Service Credit

ARTICLE 8.4 COMMUNITY PROPERTY §§ 31685-31685.96

31685. (a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.

(b) *If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.*

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

- (1) The right to a retirement allowance.
- (2) The right to a refund of accumulated retirement contributions.

(3) The right to redeposit accumulated contributions that are eligible for redeposit by the member.

(4) The right to purchase service credit that is eligible for purchase by the member.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

31685.1. "Nonmember," as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.

31685.2. (a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.

(b) The nonmember shall file an application on a form provided by the system to obtain the refund.

(c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.

(d) The nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective.

(e) The nonmember may not cancel a refund once it has become effective.

(f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.

(g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.

(h) If the nonmember receives a refund under this section, the member may elect to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within

which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

31685.3. (a) *The nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the member in accordance with the determination of the court required by Section 31685.*

(b) The nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to the court-determined nonmember share of any previously refunded accumulated contributions and interest whether or not the nonmember elects to redeposit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before redeposit is completed.

However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) Any redeposit by the nonmember shall be made by lump sum before retirement.

31685.4. (a) *The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 31685.*

(b) *The nonmember may purchase only that service credit that the court has determined to be the community property share of the nonmember spouse.*

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to the court-determined nonmember share of the service credit whether or not the nonmember elects to purchase the service credit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before the service credit is purchased. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

31685.5. A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

(a) The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member.

(b) On the date of retirement, the member had sufficient credited service to retire for service, notwithstanding any service credit awarded to the nonmember.

31685.6. Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's application as the effective date of retirement, or the day following the date of court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board.

31685.7. (a) If the nonmember retires before the member retires, "final compensation" means the highest average annual compensation earnable by the member during the three consecutive years, or one year where applicable, prior to the date the nonmember retires. The nonmember may designate an earlier period to be used where the time period of the nonmember's marriage to the member and membership correspond.

(b) If the member has retired before the nonmember, the "final compensation" for the nonmember shall be the final compensation used in calculating the member's retirement.

(c) Upon receipt of an application for retirement by the member, the board shall notify the nonmember that his or her final compensation will not increase any further and shall identify which options are available to the nonmember and the impact thereof.

31685.8. A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

31685.9. If a member becomes disabled, the combined benefit payments to both the member and nonmember shall not exceed the amount that would otherwise be paid to the member alone.

31685.95. (a) Under no circumstances shall a retirement plan be required to make payments in any manner that will result in an increase in the amount of benefits provided under the plan.

(b) All benefits determined pursuant to Part 5 (commencing with Section 2610) of Division 7 of the Family Code and this article shall be determined on the basis of the actuarial economic and demographic assumptions and values prescribed by the board of the affected retirement plan.

31685.96. (a) The age factor applicable to the nonmember shall be based on the age of the nonmember at the time of his or her retirement.

(b) The board shall adopt age factors as recommended by the actuary.

31685.96. This article shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this article applicable in the county.

3. Certain COLA's

31874.3. (a) (1) *Whenever the percentage of annual increase in the cost of living as of January 1 of each year as shown by the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers exceeds the maximum benefit increase provided in Section 31870, 31870.1, 31870.2, or 31870.3, whichever is applicable, the board of retirement may provide that all or part of the excess percentage increase shall be applied to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3. The board shall determine the amount of the excess to be applied, which amount shall not exceed an amount that can be paid from earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.*

(2) The supplemental increases in excess of the increases applied to the retirement allowances, optional death allowances, or annual death allowances pursuant to Section 31870, 31870.1, 31870.2, or 31870.3 shall not become a part of the retirement allowances, optional death allowances, or annual death allowances to be increased by subsequent increases under Section 31870, 31870.1, 31870.2, or 31870.3.

(3) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(b) (1) *The board of retirement may, instead of taking action pursuant to subdivision (a), provide supplemental cost-of-living increases, effective on a date to be determined by the board, to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3; provided however, that only those members shall be eligible for this increase whose accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3 shall equal or exceed 20 percent as of January 1 of the year in which the board of retirement adopts an increase under this subdivision.*

(2) The supplemental increases to the retirement allowances, optional death allowances or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3 shall not become a part of the retirement allowances, optional death allowances or annual death allowances to be increased by subsequent increases under Section 31870, 31870.1, 31870.2, or 31870.3.

(3) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(c) (1) *The board of retirement may, instead of taking action pursuant to subdivision (a) or (b), provide supplemental cost-of-living increases, on a prefunded basis and effective on a date to be determined by the board, to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3; provided however, only those members shall be eligible for this increase whose*

accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3 equal or exceed 20 percent as of January 1 of the year in which the board of retirement takes action pursuant to this subdivision.

(2) The supplemental increases to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3 shall become a part of the retirement allowances, optional death allowances, or annual death allowances and shall serve to reduce the accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3, as applicable, by the same percentage as the payment that is made pursuant to this section.

(3) Before the board of retirement provides benefits pursuant to this subdivision, the costs of the benefits shall be determined by a qualified actuary and the board of retirement shall, with the advice of the actuary, provide for the full funding of the benefits utilizing funds in the reserve against deficiencies established pursuant to Section 31592.2, using surplus earnings that exceed 1 percent of the total assets of the retirement system.

(4) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(d) Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31610) of this chapter, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefit Reserve established pursuant to Section 31618.

III. PROPOSED CORRECTION

MCERA proposes to adopt these model regulations.

PROPOSED MODEL 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 [____], 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 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 \$195,000 (for 2009 and 2010 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 non-decreasing life annuity or other form of benefit described in Treasury regulation section 1.417(e)-1(d)(6) (e.g., other than a lump sum, installments, a decreasing annuity or a term certain), then the actuarially equivalent Straight Life Annuity is determined using:
 - i. The Applicable Mortality Table; and
 - ii. An interest rate that is not less than the greater of:
 - A. 5%; or
 - B. The Applicable Interest Rate.
- 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 shall be determined using:
 - i. The Applicable Mortality Table; and
 - ii. An interest rate that is not less than the greatest of:
 - A. 5.5%;

B. The interest rate that produces a benefit of not more than 105% of the benefit that would be produced if the Applicable Interest Rate were used; or

C. The Applicable Interest Rate.

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 board of retirement or the board of supervisors of a county) and (ii) the form of benefit complies with Code section 415(b) without regard to the automatic benefit increase.

In no event shall the amount payable to the Member under the form of benefit in any Limitation Year be greater than the Annual 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 1/2 year of participation for purposes of this subsection.

3. Disability and Death Benefits

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

C. Reduction for Commencement Before Age 62 For Certain Members

1. No Reduction For Certain Safety Members

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

2. Reduction For Benefits Commencing Before Age 62

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

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

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.²

SECTION IV. MULTIPLE EMPLOYER PLAN

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

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.

² Optionally, benefits can be (i) reduced in proportion to the total benefits accrued under each such plan, or (ii) reduced under the Association before being reduced under such other plans.

B. Qualified Participant

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

C. Election

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

SECTION VI. PURCHASE OF PERMISSIVE SERVICE CREDIT

A. General Rule

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.

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.

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 with in 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 County Employee Retirement Law 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 District 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. 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.

PROPOSED MODEL REGULATIONS FOR IRC SECTION 415(c)

DEFINED CONTRIBUTION LIMITS

SECTION I. PURPOSE AND SCOPE

In accordance with section 31525 and section 31899 et. seq. of the California Government Code, the regulations set forth herein are effective as of [____], and reaffirm and clarify the existing practices of the [____] 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 apply here unless otherwise stated.

SECTION II. ANNUAL ADDITIONS LIMITATION

A. Annual Additions Limit, In General

Notwithstanding anything to the contrary contained in the Plan, 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 County Employees Retirement Law.

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 Plan 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 County Employees Retirement Law;
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)) if an election is made to treat those amounts as Annual Additions in the year contributed pursuant to Code section 415(n)(1).
3. Forfeitures;
4. Amounts allocated to the Member's individual medical account (within the meaning of section 415(l)(2) of the Code), which is part of a pension or annuity plan maintained by the Employer or Affiliate, except that such amounts are not included in Annual Additions for purposes of applying the 100% of compensation limit.

The term "Annual Additions" excludes:

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

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)) if an election is made to treat the accrued benefit derived from all such contributions as an annual benefit subject to the limits of Code section 415(b).

E. Employer

"Employer" means the participating County or District that participates in the Association and employs the Member.

F. Limitation Year

"Limitation Year" means the calendar year.³

G. Maximum Permissible Amount

"Maximum Permissible Amount" means the lesser of:

1. \$49,000 (for 2009 and 2010), as adjusted for increases in the cost-of-living under section 415(d) of the Code; or
2. 100 percent of the Member's Total Compensation for the Limitation Year.

H. Severance From Employment

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

³ The Association may elect a different consecutive 12-month period.

- 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 nonaccountable plan, as described in Treasury regulations section 1.62-2(c);
- b. Amounts described in Code section 104(a)(3), 105(a), or 105(h), but only to the extent that these amounts are includible in the gross income of the Member;
- c. Amounts paid or reimbursed by the Employer or an Affiliate for moving expenses incurred by a Member, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the Member under Code section 217;
- d. The amount includible in the gross income of an Member upon making the election described in Code section 83(b);
- e. Amounts that are includible in the gross income of a Member under the rules of Code section 409A or Code section 457(f)(1)(A), or because the amounts are constructively received by the Member; and
- f. An amount that is excludable under Code section 106 that is not available to a Member in cash in lieu of group health coverage because the Member is unable to certify that he or she has other health coverage; provided, however, that the Employer does not request or collect information regarding the Member's other health coverage as part of the enrollment process for the health plan.

2. Items Excluded

The following items are excluded from Total Compensation:

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

plan (whether or not qualified) other than amounts received during the year by a Member pursuant to a nonqualified unfunded 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)).⁴
- 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 Year⁵ 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.⁶

⁴ Association may provide that Total Compensation for a Limitation Year includes amounts earned during the Limitation Year but not paid during the Limitation Year solely because of the timing of pay periods and pay dates if: (i) these amounts are paid during the first few weeks of the next Limitation Year; (ii) the amounts are included on a uniform and consistent basis with respect to all similarly situated employees; and (iii) no compensation is included in more than one Limitation Year.

⁵ If the Association has elected a Limitation Year that is not based on the calendar year, it may provide for the substitution of the calendar year for the limitation year for this purpose.

⁶ The Association may also provide that the following amounts are includable in Total Compensation if paid by the later of 2½ months after severance from employment or the end of the Limitation Year if the amounts would have been included in Total Compensation if paid prior to Severance from Employment: (i) accrued bona fide sick, vacation or other leave is included in Total Compensation if the Member would have been able to use the leave had employment continued, and (ii) payment pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

- 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 III. AGGREGATION WITH OTHER DEFINED CONTRIBUTION PLANS

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

SECTION IV. COORDINATION WITH OTHER DEFINED CONTRIBUTION PLANS

In the event that a Member participates in another defined contribution plan of the Employer or of an Affiliate that is a tax-qualified defined contribution plan, contributions or allocations that would otherwise be made on behalf of the Member to the other plan shall first be reduced to the extent necessary to avoid exceeding the limitations of this regulation.⁷

⁷The regulation could alternatively provide that allocations will first be reduced under the Association.

SECTION V. CORRECTION

Any excess Annual Additions shall be corrected using the methods specified in section 6.06 and Appendix A.08 of Revenue Procedure 2008-50 or any subsequent 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.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

P

TAB P

MISCELLANEOUS CERL DOCUMENT ISSUES

DISTRIBUTION RESTRICTIONS

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – DISTRIBUTIONS**

I. ISSUES

A pension plan may not permit distributions before the earliest of death, disability, normal retirement age, severance from employment or plan termination. Certain CERL provisions permit distributions from the system prior to the occurrence of these events. Those CERL provisions are as follows:

1. Refunds – CERL §§ 31486.2, 31489, 31496.7 and 31499.2 permit the refund of pre-tax and post-tax member contributions to members who transfer to an alternative retirement plan. These provisions were specifically enacted to apply only to the counties named in each provision. MCERA has not refunded any pre-tax contributions to members prior to separation from service. See Section A.3 of the enclosed Compliance Chart for additional details.
2. Elective Officers – CERL § 31553 permits elective officers to withdraw from the retirement system within 60 days of leaving office and receive a refund of their contributions without requiring that they first terminate employment with the county or district. The CERL presumes that the elected officer has terminated employment when he/ she leaves office but that may not always be the case. In instances where an elected official has not terminated his/ her employment and receives a refund of contributions, the refund will violate the restriction on distributions from a defined benefit plan. CERL § 31553 applies to all '37 Act systems. MCERA has not had an elective official withdraw from the system. See Section A.3 of the enclosed Compliance Chart for additional details.
3. District Withdrawal – CERL § 31564 provides that when a district withdraws from a '37 Act system and does not have any existing retirees, member contributions will be refunded if the district does not elect to have accumulated contributions transferred to another public retirement system. Also, CERL § 31565 permits members of a '37 Act system who are eligible for membership in the State Teachers' Retirement System to elect to withdraw their accumulated contributions from the '37 Act system. These provisions do not require a plan termination in order to receive a return of contributions. Both provisions are mandatory and apply to all '37 Act systems. MCERA has not had any districts withdraw from the system.
4. Refund of Supplemental Contributions – CERL § 31627.2 allows members to elect to receive a refund of supplemental member contributions made under CERL § 31627. In certain circumstances, the ability to request a refund under CERL § 31627.2 will result in an impermissible in-service distribution when the refund occurs prior to death, disability, separation from service or attaining normal retirement age. MCERA does not have a CERL § 31627 program so it cannot make refunds under CERL § 31627.2. See Section A.3 of the enclosed Compliance Chart for additional details.
5. Refund of Contributions for Military Credit – CERL § 31653 allows the governing board of a county or district to choose to make contributions to the system on behalf of members who return from military service equal to the contributions that would have been made but for the period of military service. The county or district can choose to contribute the employer and/ or member contributions for the period of military service. If a county or district chooses to contribute the member portion of contributions for the period of military service, any

contributions already made by the member to the system for that period of military service will either be refunded to the member or credited to his/ her account under CERL § 31653. This refund of member contributions will result in an impermissible in-service distribution. See Section A.3 of the Compliance Chart for additional details.

6. Temporary Reemployment of Judges – CERL § 31680.1 permits retired members to continue receiving their retirement benefits while serving temporarily as a judge. In some instances, payment of retirement benefits to an individual who continues to perform services, even in a temporary capacity, will violate the rule against in-service distributions from a pension plan. To MCERA's knowledge, benefit payments to retirees serving temporarily as judges have not been made from the System. See Section A.3 of the Compliance Chart for additional details.
7. Limit on Reemployment – CERL §§ 31680.2 and 31680.3 provide that retired members may continue to receive their retirement benefits from the system if they are reemployed in a position requiring special skills and do not work more than 720 or 960 hours respectively. CERL §§ 31680.4 and 31680.5 require the suspension of benefits if reemployment exceeds the prescribed hour limit in §§ 31680.2 and 31680.3. It is possible that part-time or temporary employment would occur without having a separation from service or prior to the member reaching normal retirement age. Thus, these CERL provisions may lead to an impermissible in-service distribution. In practice, MCERA requires retired members to be separated from service for at least the length of time equal to the hours of vacation time remaining on the payroll records at termination before returning to work. See Section A.3 of the Compliance Chart for additional details.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

1. Refunds

31486.2. (a) (1) Except as otherwise provided in Section 31486.3 or 31486.35, there shall be no general members' contributions under the plan created by this article.

(2) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. A refund under this section shall be payable to the member.

(3) A member who has five or more years of county service as defined in subdivision (g) of Section 31486.1 may elect to leave his or her contributions on deposit for service retirement benefits only.

(b) (1) Except as provided in Sections 31486.3 and 31486.9 and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive credit in this retirement plan for that public service time, and may not receive credit for that prior public service.

(2) Absence from work without pay may not be considered as breaking the continuity of service.

31489. (a) Except as otherwise provided in Section 31490.5 or 31490.6, there shall be no general members' contributions under the plan created by this article.

(b) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. A refund under this section shall be payable to the member.

31496.7. (a) There shall be no general members' contributions under the plan created by this article.

(b) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. Any refund under this section shall be payable to the member.

31499.2. (a) (1) Except as otherwise provided in Section 31499.3, there shall be no general members' contributions under the plan created by this article.

(2) *A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. Any refund under this section shall be payable to the member.*

(b) (1) Except as provided in Sections 31499.3 and 31499.7 and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive credit in this retirement plan for that public service time, and may not receive credit for that prior public service.

(2) Absence from work or termination of employment while an eligible employee or disability beneficiary, as defined by a disability plan provided by the employer, may not be considered as breaking the continuity of service.

(3) For the purposes of subdivision (b) of Section 31499.4, an unpaid leave of absence of not to exceed one year, or a leave of absence for which an employee receives any benefit which has been approved by the employer, may not be considered an interruption of service. However, the period of time of unpaid leave may not be considered as service in calculating the benefits otherwise provided under this article.

2. Elective Officers (Unclear Provision)

31553. *Elective officers become members of the retirement association on the first day of the calendar month following the filing of a declaration with the board to become a member, provided, however, that any such elective officer may, within 60 days after the expiration of the officer's term of office or within 60 days after the officer ceases to hold the office, rescind the declaration and withdraw from the retirement association. In such cases, all contributions paid by the member shall be refunded in the same manner as applicable to members terminating service.*

3. District Withdrawal (Unclear Provisions)

31564. All officers and employees of any district who have become members of the association as provided in Section 31557, may be withdrawn by a resolution of the governing body declaring all of the district's employees withdrawn from the association; provided, the governing body has first received a written petition signed by a majority of its officers and employees requesting that the district's officers and employees be withdrawn from the association.

Upon the adoption of any resolution to withdraw its members, all accumulated contributions held in the association shall be refunded to the district's employees upon the effective date of their withdrawal and in the same manner as the accumulated contributions would be refunded upon the termination of their employment by the district.

Upon the adoption of any resolution to withdraw its members and where there are no existing retirees from the district, the district's contributions shall be refunded to the district,

or shall, upon the election of and designation by the governing body of the district, be transferred to another public retirement system.

In the event of the transfer of district contributions to another public retirement system, the employee contributions shall also be transferred to the other public retirement system.

The effective date of withdrawal of any resolution adopted pursuant to this section shall be at the end of the calendar month during which such resolution is adopted.

31565. Any member of a system established under this chapter who is employed in a status requisite for membership in the State Teachers' Retirement System, may elect to transfer his membership to that system. *Any member who elects to transfer his membership pursuant to this section may also elect in writing to withdraw his accumulated contributions, and in such event he shall be paid all of his accumulated contributions in the county retirement system.*

4. Refund of Supplemental Contributions (Unclear Provision)

31627.2. *In any county in which the provisions of Section 31676.1 apply, any member who has additional contributions under Section 31504 of the Government Code, or under Section 31627 of the Government Code, may elect in writing to have all or any part of his accumulated additional contributions returned to him. The portion returned shall not be included in the calculation of the member's annuity. The board may order payment in whole or in part withheld for a period not to exceed 90 days after receipt of such written election.*

5. Refund of Contributions for Military Credit (Unclear Provision)

31653. Notwithstanding the provisions of this article, *the governing board of the county or district may elect to contribute for any member of this system who is absent from and reenters he service of the county or district pursuant to Section 31649 of this code, amounts equal to the contributions which would have been made by the member and his employer to the system on the basis of his compensation earnable at the commencement of his absence, if he had not been so absent.*

If the governing board elects to make any member's contributions pursuant to this section:

(a) *Any such member who exercises or did exercise the right to contribute to the system during the period of military service shall have such contributions refunded or credited to his account.*

(b) *Any such member who withdraws or has withdrawn his accumulated contributions during his military service and who does not or did not redeposit the amount withdrawn upon his return to employment with the county or district is entitled to be credited with any contribution the governing board elects to make, and to receive credit for service during the period he was absent on military service, the same as if he had not withdrawn his accumulated contributions, and his rate for future contributions shall be based upon his age at the commencement of his absence on military service.*

(c) *The contributions made by the governing board pursuant to this section shall be available only for the purpose of retirement for service or for disability, and shall be made available only for the purpose of retirement, and a member resigning from the service of the*

county or district after reinstatement from military service shall be entitled to withdraw only that portion of his accumulated contributions personally made by him.

(d) This section shall be retroactively applied to extend its benefits to such members of this system as the governing board may determine whose absence from county service on military service commenced on or after September 16, 1940, and who return or have returned to this service upon the termination of their military service.

6. Temporary Reemployment of Judges (Unclear Provision)

31680.1. *Any person who has retired under this chapter may, without reinstatement from retirement or loss or interruption of benefits under this chapter, serve as a juror, election officer, field deputy for registration of voters, member of the board of the association or temporarily as a judge when assigned by the Chairman of the Judicial Council and receive any fees payable for such service.*

7. Limit on Reemployment (Unclear Provisions)

31680.2. (a) Any person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing him or her, for not to exceed 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend his or her retirement allowance, and no deductions shall be made from his or her salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

31680.3. (a) Notwithstanding Section 31680.2, any member who has been covered under the provisions of Section 31751 and has retired may be reemployed in a position requiring special skills or knowledge, as determined by the county or district employing the member, for not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend the person's retirement allowance, and no deductions shall be made from the person's salary as contributions to this system.

(b) (1) This section shall not apply to any retired member who is otherwise eligible for reemployment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

31680.4. Notwithstanding any other provision of law, a member retired for service and reemployed in a county or district under this chapter shall become again an active member of the retirement association upon (a) his or her application to the board for reinstatement, (b) the determination of the board, based upon medical examination, that he or she is not incapacitated for the duties assigned to him or her; and (c) meeting the conditions for membership in Article 4 (commencing with Section 31550) are met.

For the purposes of this section, the effective date of the member's reinstatement to active membership shall be the first day of the month following the date of reemployment.

Except as permitted in Section 31680.2 or 31680.3, the retirement allowance of the member shall be canceled on the effective date of the member's reemployment and shall be resumed only upon the subsequent termination of the member from employment.

This section shall not be operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes this section and Section 31680.5 operative in that county.

31680.5. (a) Upon reinstatement, pursuant to Section 31680.4, the member's rate of contributions and retirement allowance upon subsequent retirement shall be determined as if the member were first entering the system.

Solely for the purpose of determining the member's eligibility for service retirement under this section, service shall include the member's credited service prior to reinstatement.

(b) The member's allowance upon his or her service or disability retirement or other termination subsequent to the reinstatement shall be the sum of (1) his or her retirement allowance calculated on the basis of credited service rendered after reinstatement in accordance with the formula applicable to him or her plus (2) his or her retirement allowance as it was prior to reinstatement, adjusted by any change after reinstatement in the provisions governing the calculation of his or her allowance which would have applied to him or her had he or she continued in retirement.

The retirement allowance otherwise payable under this section to a member whose allowance prior to reinstatement was paid pursuant to his or her election under Section 31810 shall be reduced as provided in Section 31810. However, for a member reinstated pursuant to Section 31680.4 prior to attaining age 62, the reduction required by Section 31810 shall be the amount which is the actuarial value of the increase in the allowance from date of retirement to date of reinstatement.

Notwithstanding any other provision of this chapter, the retirement allowance payable to any member subject to this section for any credited service for which a retirement allowance was paid prior to reinstatement shall not be less than the retirement allowance which would have been payable on the date of the subsequent retirement had the member not been

reinstated, adjusted, however, by any reduction under this section because of an election under Section 31810.

(c) Notwithstanding Article 10 (commencing with Section 31720), upon retirement for disability subsequent to reinstatement, a member shall receive a disability retirement allowance as follows:

(1) A service-connected disability allowance shall be equal to one-half of his or her final compensation or an allowance computed as prescribed by subdivision (b), whichever is greater.

(2) A nonservice-connected disability allowance shall be computed using the method prescribed by subdivision (b).

(d) This section shall not be operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes this section and Section 31680.4 operative in that county.

III. PROPOSED CORRECTION

The proposed correction is for MCERA, with other '37 Act systems, to ask the Legislature to enact the following amendment to the CERL and to adopt the following proposed model regulations. The words italicized below are the corrective changes being proposed to the CERL.

PROPOSED TAX COMPLIANCE CHANGES TO THE CERL

An act to amend Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code relating to county employees retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB __, as introduced, _____ County employees. retirement: Internal Revenue Code compliance.

It is intended that the county employees' retirement systems are to be tax qualified under the Internal Revenue Code. This status preserves the deferred treatment of federal income tax on public employer contributions to public employee pensions and ensures that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of the Internal Revenue Code.

The County Employees Retirement Law currently includes a number of provisions that are designed to maintain tax qualification for these systems. This bill would add or clarify existing provisions as needed to maintain that status.

Vote: _____

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

31485.17. Notwithstanding any other provision in this Chapter, no amount shall be distributed from a retirement system established under this Chapter prior to the time that such distribution may be made in compliance with the requirements of section 401 (a) of Title 26 of the United States Code that are applicable to public employee plans, including but not limited to requirements relating to the distribution of amounts prior to the earlier of a member's death, disability, separation from service with all employers that maintain the retirement system, or attainment of normal retirement age as defined by the retirement system.

PROPOSED MODEL REGULATIONS FOR IRC SECTION 401(a)

RETURN TO WORK AND SEPARATION FROM SERVICE

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

1. The member has not entered into any predetermined agreement (either written or unwritten) with the county or a district prior to retirement to return to work for the employer after retirement, regardless of the length of the separation.
2. The member must have at least a _____ calendar day separation from service prior to entering into an agreement to return, prior to returning, to employment with the county or district while retired.
3. The member may be employed by the county or district prior to the time in sections 1 and 2 for emergency situations as defined in Government Code section 8558.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

CONTRIBUTIONS

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CONTRIBUTIONS**

I. ISSUES

Contributions to a plan may only be made by employers and/ or employees in order to provide benefits to employees and their beneficiaries.

CERL § 31656 allows the Orange County Transit District to extend service credit to an employee who takes a leave of absence to serve as a union official. The provision also permits the union to make contributions to the system on behalf of the employee to purchase the service credit attributable to the leave of absence. Because the union is not a participating employer, it cannot make contributions to the system. Because the Orange County Transit District is not a participating employer of MCERA, MCERA does not have an operational issue.

CERL § 31685 gives the BOR the option to give alternate payees the same rights under the plan as members, including the right to reinstate previously lost benefits, enhance benefits through redeposits, or purchase service credit. CERL § 31685 is an optional provision that is only operative in a county if the county's board of retirement adopts the provision. CERL § 31685 does not apply to MCERA so there is no operational failure.

Please see Section B of the enclosed Compliance Chart for additional information.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

1. Union Employees

31656. *Nothing in this chapter shall be construed to prohibit any district established pursuant to Part 4 (commencing with Section 40000) of Division 10 of the Public Utilities Code, from extending retirement service credit pursuant to Section 40127 of the Public Utilities Code to any employee of the district who is on an authorized leave of absence to serve as an official of a recognized employee bargaining unit, under all of the following conditions:*

(a) The employee or the recognized employee organization, or both, as determined pursuant to applicable provisions of this part, agree to pay the total contributions which would otherwise be paid if the employee were not on leave, as well as any additional costs which may accrue to the system as a result of this extension of coverage.

(b) The maximum service credit accumulated under this section shall not exceed 12 years.

(c) Employees covered under this section shall not be eligible for disability benefits under any public employees' retirement system in this state while on such leave of absence.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in the county.

2. Domestic Relations Orders (Unclear Provision)

31685. *(a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.*

(b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

(1) The right to a retirement allowance.

(2) The right to a refund of accumulated retirement contributions.

(3) The right to redeposit accumulated contributions that are eligible for redeposit by the member.

(4) The right to purchase service credit that is eligible for purchase by the member.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

III. PROPOSED CORRECTION

The proposed correction is for MCERA, with the other '37 Act systems to ask the Legislature to enact the following amendments to the CERL. The words italicized below are the corrective changes being proposed to the CERL.

1. Union Employees

PROPOSED TAX COMPLIANCE CHANGES TO THE CERL

An act to amend Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code relating to county employees retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB __, as introduced, _____ County employees. retirement: Internal Revenue Code compliance ..

It is intended that the county employees' retirement systems are to be tax qualified under the Internal Revenue Code. This status preserves the deferred treatment of federal income tax on public employer contributions to public employee pensions and ensures that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of the Internal Revenue Code.

The County Employees Retirement Law currently includes a number of provisions that are designed to maintain tax qualification for these systems. This bill would add or clarify existing provisions as needed to maintain that status.

Vote: _____

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code is amended as follows:

31656. Nothing in this chapter shall be construed to prohibit any district established pursuant to Part 4 (commencing with Section 40000) of Division 10 of the Public Utilities Code, from extending retirement service credit pursuant to Section 40127 of the Public Utilities Code to any employee of the district who is on an authorized leave of absence to serve as an official of a recognized employee bargaining unit, under all of the following conditions:

(a) ~~The employer or the recognized employee organization, or both, as determined pursuant to applicable provisions of this part, agrees to pay the total contributions which would otherwise be paid if the employee were not on leave, as well as any additional costs which may accrue to the system as a result of this extension of coverage.~~

(b) The maximum service credit accumulated under this section shall not exceed 12 years.

(c) Employees covered under this section shall not be eligible for disability benefits under any public employees' retirement system in this state while on such leave of absence.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in the county.

2. Domestic Relations Orders

Although pursuant to a domestic relations order beneficiaries and alternate payees may be accorded some of the same rights as participants, it is not entirely clear whether those rights extend to making contributions to the plan to purchase service credit or make redeposits. We believe that such contributions may be made to the System when it is pursuant to a domestic relations order. Therefore, no correction is proposed.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

REVERSION

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – REVERSIONS**

I. ISSUES

In order for a pension plan to be tax-qualified, it must be impossible prior to the satisfaction of all liabilities for any plan assets to be used for purposes other than the exclusive benefit of employees and their beneficiaries and paying reasonable plan expenses. See Treasury Regulation § 1.401-2(a)(2).

CERL § 31564 allows districts to withdraw their officers and employees from membership in a system and allows the district to choose whether to have all accumulated contributions refunded or transferred to another public retirement system when the district does not have any existing retirees. CERL § 31564 can lead to situations where the system is obligated to pay retirement benefits to certain members of the withdrawn district who have not yet retired while allowing the district to recoup the contributions prior to the satisfaction of the district's liabilities under the system. MCERA has not had any districts withdraw from the system so MCERA does not have an operational failure.

Please see Section C.1 of the enclosed Compliance Chart for additional information.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

31564. All officers and employees of any district who have become members of the association as provided in Section 31557, may be withdrawn by a resolution of the governing body declaring all of the district's employees withdrawn from the association; provided, the governing body has first received a written petition signed by a majority of its officers and employees requesting that the district's officers and employees be withdrawn from the association.

Upon the adoption of any resolution to withdraw its members, all accumulated contributions held in the association shall be refunded to the district's employees upon the effective date of their withdrawal and in the same manner as the accumulated contributions would be refunded upon the termination of their employment by the district.

Upon the adoption of any resolution to withdraw its members and where there are no existing retirees from the district, the district's contributions shall be refunded to the district, or shall, upon the election of and designation by the governing body of the district, be transferred to another public retirement system.

In the event of the transfer of district contributions to another public retirement system, the employee contributions shall also be transferred to the other public retirement system.

The effective date of withdrawal of any resolution adopted pursuant to this section shall be at the end of the calendar month during which such resolution is adopted.

III. PROPOSED CORRECTION

The proposed correction is for MCERA, with other '37 Act systems to ask the Legislature to enact the following amendments to the CERL. The words italicized below are the corrective changes being proposed to the CERL.

PROPOSED TAX COMPLIANCE CHANGES TO THE CERL

An act to amend Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code relating to county employees retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB __, as introduced, _____ County employees. retirement: Internal Revenue Code compliance.

It is intended that the county employees' retirement systems are to be tax qualified under the Internal Revenue Code. This status preserves the deferred treatment of federal income tax on public employer contributions to public employee pensions and ensures that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of the Internal Revenue Code.

The County Employees Retirement Law currently includes a number of provisions that are designed to maintain tax qualification for these systems. This bill would add or clarify existing provisions as needed to maintain that status.

Vote: _____

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

Section 31564 of the Government Code is amended to read as follows:

31564. All officers and employees of any district who have become members of the association as provided in Section 31557, may be withdrawn by a resolution of the governing body declaring all of the district's employees withdrawn from the association; provided, the governing body has first received a written petition signed by a majority of its officers and employees requesting that the district's officers and employees be withdrawn from the association. Upon the adoption of any resolution to withdraw its members, all accumulated contributions held in the association shall be refunded to the district's employees upon the effective date of their withdrawal and in the same manner as the accumulated contributions would be refunded upon the termination of their employment by the district.

Upon the adoption of any resolution to withdraw its members and where there are no existing retirees from the district, the district's contributions shall be ~~refunded to the district, or shall, upon the election of and designation by the governing body of the district,~~ transferred to another public retirement system *that is intended to be a tax-qualified retirement plan under section 401(a) of Title 26 of the United States Code.*

No refunds, distributions or transfers of contributions or other funds shall be made to any employees or to any district unless such action complies with the requirements of section 401(a) of Title 26 of the United States Code.

In the event of the transfer of district contributions to another public retirement system, the employee contributions shall also be transferred to the other public retirement system.

The effective date of withdrawal of any resolution adopted pursuant to this section shall be at the end of the calendar month during which such resolution is adopted.

Article 1 (commencing with Section 31450) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code is amended to add the following new section:

31485.16. *Notwithstanding any other provision in this Chapter, the rights of each member to his or her accrued retirement benefits under the retirement system shall be non-forfeitable in accordance with the requirements of section 401(a) of Title 26 of the United States Code that are applicable to public employee plans as follows:*

(a) On the member's attainment of normal retirement age as defined by the retirement System while currently employed by an employer that maintains such system.

(b) To the extent then funded, on the date of the termination of the system, the partial termination of the system, or the complete discontinuance of contributions under the system, as provided in such Title.

When a member's accrued benefits become non-forfeitable under this section, the member may be retired upon filing with the board a written application in the manner provided by Article 8 and Article 9 of this Chapter, as applicable.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

SACRS has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) that will monitor tax compliance issues for all SACRS member systems. This committee will meet at least annually and more often if required. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

ACTUARIAL ASSUMPTIONS

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS – CODE SECTION 401(a)(25)**

I. ISSUES

Whenever plan benefits must be calculated using actuarial factors, Code § 401(a)(25) requires that a defined benefit plan specify the actuarial factors in the plan in a way that precludes employer discretion in order for the plan to be considered as providing definitely determinable benefits. The Code § 401(a)(25) requirement that a plan specify the actuarial assumptions used to determine the amount of optional forms of benefit has applied to the CERL since the passage of the Retirement Equity Act of 1984.

Instead of stating the actuarial factors in the CERL, CERL § 31456 defines actuarial equivalent as a benefit of equal value when calculated based on mortality tables adopted by the Board of Supervisors ("BOS") and regular interest thereon. CERL § 31611 provides that based on recommendations from the plan actuary, the Board of Retirement ("BOR") recommends appropriate mortality tables to the BOS for adoption. CERL § 31472 defines interest as regular interest as determined by the Board (normally "Board" means the BOR, except in counties with a board of investment).

Similarly, CERL § 31777 provides a deferred retirement option program ("DROP") benefit that must be actuarially reduced if paid in a lump sum but this CERL provision does not state the actuarial factors that will be used when calculating the reduction. CERL § 31777 is an optional provision that must be adopted by the BOS of a county or governing board of a participating district to become operative in that county. CERL §31777 does not apply to MCERA.

Interest is determined by the Board of Retirement, and verified by the actuary for certain benefit determinations. The MCERA Board of Retirement ("BOR") is a nine member board of trustees that governs the retirement system independently of the employer. Four trustees are elected by MCERA members, four are appointed by the BOS; one is the elected county Treasurer. The BOR is governed by fiduciary rules that are the same as the fiduciary rules under ERISA. Therefore, there is no employer discretion in determining the interest rate. The BOR should be treated in the same way as the governing board of a Taft-Hartley plan with respect to the setting of interest rates.

See Sections A.5.c and J of the enclosed Compliance Chart for additional information.

II. CURRENT PROVISIONS IN THE CERL

The words italicized below are the portions of the current CERL provisions that cause or may cause compliance issues.

31456. *"Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables adopted by the board of supervisors and regular interest thereon.*

31611. An actuarial valuation shall be made within one year after the date on which any system established under this chapter becomes effective, and thereafter at intervals not to exceed three years. The valuation shall be conducted under the supervision of an enrolled actuary and shall cover the mortality, service, and compensation experience of the members and beneficiaries, and shall evaluate the assets and liabilities of the retirement fund. *Upon the basis of the investigation, valuation, and recommendation of the actuary, the board shall, at least 60 days prior to the beginning of the succeeding fiscal year, recommend to the board of supervisors such changes in the rates of interest, in the rates of contributions of members, in county and district appropriations as are necessary, and appropriate mortality tables.* In making recommendations to the board of supervisors, the board shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. No adjustment shall be included in the new rates for time prior to the effective date of the revision. The cost of actuarial valuations and investigations may, in the sound discretion of the board, be charged against the earnings of the retirement fund.

31777. (a) The provisions of this section shall be referred to as the "actuarial equivalent DROP provisions."

(b) *A member who retires for service on or after the operative date of the program may elect, on a form prescribed by the board, to receive a lump-sum payment and an actuarially reduced monthly allowance pursuant to this section in lieu of the monthly allowance that would otherwise be payable to the member pursuant to this chapter.*

(c) A member who has elected to participate in the forward DROP provisions of the program, pursuant to Sections 31771 to 31776.5, inclusive, or the backward DROP provisions of the program, pursuant to Sections 31778 to 31778.2, inclusive, is not eligible to make the election provided under this section.

(d) (1) A member who makes the election described in this section shall receive a one-time lump-sum payment at the time of retirement in an amount chosen by the member that may not exceed the maximum amount specified in the implementing ordinance, as provided in subdivision (e).

(2) The amount of the lump-sum payment shall be calculated in accordance with the implementing ordinance.

(e) The implementing ordinance shall prescribe one of the following amounts as the maximum amount of the lump-sum payment under this section:

(1) The aggregate amount of the member's contributions to the system, plus interest if applicable.

(2) The actuarial present value of 20 percent of the monthly allowance otherwise payable to the member under this chapter.

(3) An amount that would cause the member's monthly allowance under this chapter to be actuarially reduced to an amount equal to 50 percent of the member's final compensation.

(f) Notwithstanding any other provision of this chapter, a member who makes the election described in this section shall receive a monthly allowance pursuant to this chapter that shall be actuarially reduced to reflect the lump-sum amount paid under subdivision (d).

III. PROPOSED CORRECTION

MCERA proposes to adopt these model regulations.

PROPOSED MODEL REGULATIONS FOR IRC SECTION 401(a)

SEVERAL ISSUES ADDRESSED

SECTION I. PURPOSE AND SCOPE

In accordance with section 31525 of the California Government Code, the regulations set forth herein are effective as of [] and reaffirm and clarify the existing practices of the [] County Employees Retirement Association (the "Association").

SECTION II. ACTUARIAL EQUIVALENT

For determining benefits provided by the Association, actuarial equivalents shall be established by the Board as being a benefit of equal value when computed upon the basis of mortality tables adopted by the Board and regular interest thereon.

IV. PROPOSED ACTIONS TO AVOID FURTHER ISSUES

The State Association of County Retirement Systems ("SACRS") has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) to monitor tax compliance issues for all SACRS member systems such as MCERA. This committee will meet at least annually and more often if necessary. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

Q

TAB Q

MCERA SPECIFIC ISSUES

**CALIFORNIA COUNTY EMPLOYEE RETIREMENT SYSTEMS
ISSUES AND PROPOSED CORRECTIONS**

1. 401(h) Account

From 1998 to the present MCERA has provided retiree health benefits. These benefits were paid from "excess earnings" as provided in the CERL. MCERA has not complied with the requirements of Code § 401(h) and did not pay these benefits from an account structured to comply with 401(h). These benefits were paid from "excess earnings" in accord with the CERL. MCERA has complied with the provisions of the CERL that govern these benefits. Moreover, on August 24, 1987, the Service issued a favorable determination letter to MCERA on the CERL – which is MCERA's plan document – so the Service has effectively ruled that MCERA is not in noncompliance with the qualification rules on account of providing retiree health benefits. MCERA understands, however, that going forward it will most likely have to change its operations to conform to Code § 401(h). (In this respect, please see Tab M and proposed corrections to the CERL for retiree health benefits.)

MCERA proposes the following:

- MCERA intends to cease providing any retiree health benefits as of August 1, 2011.
- Prior to that date, MCERA will adopt the model regulations for a 401(h) account in Tab M. Additionally, the County will contribute to that account in accord with section 401(h) to pay retiree health benefits up to August 1, 2011. MCERA will also comply with CERL section 31592.4 to facilitate those contributions.
- MCERA understands that the Service generally requires that the employer correct payments of retiree health benefits from assets other than those in a 401(h) account. However in this case the Service has ruled, for MCERA specifically, that its plan document met the rules of tax qualification. (The relevant provisions of the Code were enacted prior to the date of the determination letter issued to MCERA and the relevant provisions of the CERL were enacted prior to that date as well.) The determination letter issued by the Service covers the provisions of the CERL concerning paying retiree health benefits. Therefore, it would be inappropriate to require MCERA to make any retroactive change in this regard.
- If the Service does not wholly agree, then MCERA wishes to point out that the County has already "repaid" to MCERA a substantial part of the amount of retiree health benefits. This is because assets available for pensions have been reduced with payment of these benefits, thereby causing the actuaries to calculate a higher required annual contribution from the County. This has occurred for every year in which retiree health benefits have been paid. MCERA's actuaries have not calculated the amount repaid but can do so if the Service requests.
- Finally, we respectfully request that the Service take into account Mendocino County's seriously difficult financial circumstances in considering any additional contribution to the County. The County is responsible for its indigent and underserved residents. Additional contributions will adversely affect the community by reducing the funds available to the poor. The rules of the Service clearly allow this

fact to be taken into account Under I.R.M. 5.8.11.2.2.1, (section 5), the Service takes into account significantly negative effects on the community and in particular to indigent and low income and under-served individuals. (This is in the context of an offer in compromise.)

Mendocino County continues to endure sustained double-digit unemployment figures, currently around 11.3%. The County's labor force has declined by approximately 15% since the financial crisis began. Important revenue sources like the sales tax have declined by 20% since 2008-2009, timber yield tax (once a major funding source) has declined to almost nothing. The County continues to pursue layoffs to balance the budget. All of these extremely serious problems will be exacerbated under the new Governor's budget that proposes to strip a very significant amount from the County. Therefore, it would be extremely adverse to the citizens of the County if additional money had to be diverted from basic human services such as health, police, fire, welfare, mental health to MCERA, based on the errors in the application of the 401(h), especially since the Service has approved the retiree health provisions of the CERL for MCERA under its prior determination letter.

2. 402(f) Notices

Code § 402(f) requires the plan administrator of a qualified plan to provide written notice to any member receiving an eligible rollover distribution. The written notice must explain the direct rollover rules, the mandatory income tax withholding rules for distributions not directly rolled over, the tax treatment of distributions not rolled over, and when distributions may be subject to different restrictions and tax consequences after being rolled over. Sections 617 and 657 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and Sections 824, 828, 829 and 845 of the Pension Protection Act of 2006 changed the rollover rules and 402(f) notices provided after December 31, 2009 should reflect these law changes. In Notice 2009-68, the IRS provided safe harbor notices that could be used to satisfy the 402(f) notice requirements. MCERA's 402(f) notice does not currently reflect the law changes made by EGTRRA and PPA so the 402(f) notice does not correctly describe the direct rollover rules or the tax treatment of distributions. As soon as administratively practicable, MCERA will begin providing the safe harbor notice provided in Notice 2009-68 for distributions not from a designated Roth account.

3. Required Minimum Distribution

Code § 401(a)(9) requires that a member's entire interest must be distributed or begin to be distributed no later than April 1 following the later of the year in which the employee attains age 70½ or the year in which the employee retires. MCERA did not have a process in place to ensure that members timely received their required minimum distribution ("RMD"). MCERA is in the process of determining the extent of this failure. See Tab I for relevant CERL provisions.

MCERA will correct its RMD failure by distributing the required minimum distribution amounts (plus interest) to each affected individual. The interest rate used will be the rate of interest credited to member accounts for the affected plan years. Interest will be credited from the date of the failure up to the date of the corrective distribution.

If any affected individuals cannot be found, MCERA will use either the IRS or DOL location program to complete correction of this failure.

R

**MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
APPLICANT'S REPRESENTATIONS**

A. Under Examination

To the best of the Board of Retirement's knowledge: (1) the subject plan is not currently under examination of either an Employee Plans Form 5500 series return or other Employee Plans examination, (2) the Plan Sponsor is not under an Exempt Organizations examination (that is, an examination of a Form 990 series return or other Exempt Organizations examination), (3) Neither the Plan Sponsor nor any of its representatives has received verbal or written notification from the Tax Exempt and Government Entities Division of the Internal Revenue Service of an impending examination or of any impending referral for such examination, nor is the plan in Appeals or litigation for any issues raised in such an examination, and (4) The subject plan is not currently under investigation by the Criminal Investigation Division of the Internal Revenue Service.

B. Abusive Tax Avoidance Transactions

Neither the Plan nor Plan Sponsor have been a party to an abusive tax avoidance transaction as defined in Section 4.13(2) of Revenue Procedure 2008-50.

C. Penalty of Perjury

Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of this submission are true, correct, and complete.

James M. Andersen
Signature

1/18/2011
Date

James M. Andersen
Print Name

Administrator
Title

TAB S

ADOPTION OF MCERA

BY

PARTICIPATING EMPLOYERS

TABLE OF CONTENTS

1. Cemetery District of the Redwoods
2. County of Mendocino
3. Mendocino County Employees' Retirement Association ("MCERA")
4. Willits Cemetery District

CEMETERY DISTRICT OF THE REDWOODS

CEMETERY DISTRICT OF THE REDWOODS

P.O. BOX 153

WILLITS, CALIFORNIA 95490

June 11th. 1970

Board of Supervisors of
Mendocino County,
Court House,
Ukiah, Calif.

Gentlemen:

Pursuant to Government Code
Section 31557 and Section 31557.2, it is
hereby requested that you take the necessary
steps to include the Employees of the Cemetery
District of the Redwoods, for coverage with
the Mendocino County Employees' Retirement
Association.

This motion was adopted by
the Trustees of the Cemetery District of the
Redwoods on the 5th. day of June, 1970.

Thanking you,

Very truly

Cemetery District of the Redwoods

By *Lenore M. Fairbanks*
Mrs. Lenore M. Fairbanks
Trustee.

July 13, 1970

Cemetery District of the Redwoods
Post Office Box 153
Millits, California 95490

Attention: Mrs. Lenore M. Fairbanks, Trustee

Gentlemen:

In compliance with your recent request to include your employees in the Mendocino County Employees' Association.

The Board of Directors of said Association on July 10, 1970 adopted your request per Section 31557 and 31557.2. The effective date of their entrance will be July 1, 1970.

We are enclosing our Enrollment Affidavit cards to be completed by the employees. Kindly return the cards to this office when completed.

Thanking you in advance for your kind cooperation in this matter, if you should have any questions, please do not hesitate to write or call this office.

Very truly yours,

Sam Ray, Jr.
Treasurer Retirement Board

SRJr./rm
Encls. (3)

MINUTE ORDER FROM THE
BOARD OF SUPERVISORS

Supervisors Present:

Supervisors Absent: None

Dated: August 25, 1970

RETIREMENT BOARD

CEMETERY OF THE REDWOODS
Request had been received by the Board from the Cemetery of the Redwoods Board of Directors requesting that they be allowed inclusion in the Mendocino County Employees Retirement System. Matter had been referred to the District Attorney's office.
Upon motion of Supervisor Banker, seconded by Supervisor Barra, and carried, IT IS ORDERED that the request for inclusion in the County Employees Retirement System by the Cemetery of the Redwoods be approved.

STATE OF CALIFORNIA) ss.
COUNTY OF MENDOCINO)

I, VIOLA N. RICH
Clerk of the Board of Supervisors,
State of California, do hereby
and correct copy of an order
same appears spread upon the

WITNESS my hand
affixed this ____ day of ____

____, Clerk, and ex-officio
the County of Mendocino,
going to be a full, true
of Supervisors, as the

____, said Board of Supervisors

____, CLARKSON, County Clerk
io Clerk of the Board of

By _____
Deputy

COUNTY OF MENDOCINO

ORDINANCE NO. 309

AN ORDINANCE LIMITING WEIGHTS OF VEHICLES AND
LOADS TRANSPORTED OVER LARGO BRIDGE.

The Board of Supervisors of the County of Mendocino DO ORDAIN as follows:

SECTION ONE

No motor or other vehicle shall be operated, driven, or hauled, or transported upon, over or along that certain bridge located in the County of Mendocino, State of California, known as the Largo Bridge, said bridge being located on that certain road running from U.S. Highway 101 in an easterly direction and across Russian River to the County Road running along the east side of Russian River between Old Hopland and Talmage in said County, the total weight of which, including its load, exceeds twelve thousand pounds. A trailer attached to any such vehicle shall be construed as being a part thereof.

SECTION TWO

Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding Five Hundred (\$500.00) Dollars, or by imprisonment in the County Jail not exceeding the term of six (6)

SECTION THREE

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remaining portions of this Ordinance, it being hereby expressly provided that this Ordinance, and each section, subsection, paragraph, sentence, clause or phrase thereof, would have been adopted, irrespective of the fact that any one or more other sections, subsections, paragraphs, sentences, clauses or phrases be declared invalid or unconstitutional.

This ordinance shall be published in the Willits News and shall be effective October 16th, 1947.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS of Mendocino County, State of California, on the 15th day of September, 1947, by the following vote:

AYES: Supervisors Safford, Severance, Iawson, Haehl

NOES: Supervisors None ABSENT: Supervisors: Redwine

ATTEST: W.J. BROADBENT, County Clerk and
ex-officio Clerk of the Board of Supervisors

By Edith Bell Deputy Clerk

Ed. Haehl
Chairman of the Board of Supervisors of
the County of Mendocino, State of California

ORDINANCE NO. 310

AN ORDINANCE ACCEPTING AND BY REFERENCE ADOPTING,
THE PROVISIONS OF AN ACT OF THE LEGISLATURE, STATE
OF CALIFORNIA, ENTITLED, "COUNTY EMPLOYEES' RETIRE-
MENT ACT OF 1937".

The Board of Supervisors of the County of Mendocino do ordain as follows:

SECTION ONE

The Board of Supervisors of the County of Mendocino, State of California, does hereby accept the provisions of an Act of the Legislature of the State of California, entitled, "An Act to provide for the creation, establishment, and adjustment with other systems, of a retirement system for employees of the several counties and districts as defined herein, and attaches of municipal courts, consisting of retirement compensation and death benefits," approved June 30th, 1937, being Chapter 677 of the Statutes of 1937, and said Board of Supervisors does

hereby by reference adopt and incorporate all and every one of the provisions of said Act of the Legislature as a part of and applicable to, and make all and every one of said provisions a part of and applicable to, the system and schedules of compensation of all officers, and other persons employed by said County whose compensation is fixed by the Board of Supervisors of said County and whose compensation is paid by said County, and all employees and officers of the County of Mendocino now or hereafter established by ordinance of the Board of Supervisors who are or may hereafter be eligible to the benefits of any retirement system under the provisions of said Act, said Act to become operative January 1st, 1948.

SECTION TWO

This ordinance shall take effect thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage hereof shall be published for at least one week in the Willits News, a newspaper printed and published in the County of Mendocino, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

PASSED AND ADOPTED, as an ordinance of the County of Mendocino, at a regular meeting of the Board of Supervisors held on the 15th day of October, 1947, by the following vote:

AYES: Supervisors Hedwine, Safford, Severance, Lawson, Maohl

NOES: Supervisors: None

ABSENT: Supervisors: None

Ed Maohl
CHAIRMAN of the Board of Supervisors of
the County of Mendocino, State of California

ATTEST:

W. J. BRONDEUS, County Clerk and ex-officio
Clerk of the Board of Supervisors

By Edith Bush Deputy Clerk.

---000---

ORDINANCE NO. 311

AN ORDINANCE AMENDING ORDINANCE NO. 309 OF MENDOCINO
COUNTY ORDINANCES AND LIMITING RIGHTS OF VEHICLES WITH
LOADS TRANSPORTED OVER LARGE BRIDGE

The Board of Supervisors of the County of Mendocino DO ORDAIN as follows:

SECTION ONE

Section one of Ordinance No. 309, Ordinances of Mendocino County, is hereby amended to read as follows:

No motor or other vehicle shall be operated, driven, or hauled, or transported upon, over or along that certain bridge located in the County of Mendocino, State of California, known as the Large Bridge, said bridge being located on that certain road running from U.S. Highway 101 in an easterly direction and across Russian River to the County Road running along the east side of Russian River between Old Hopland and Talmage in said County, the total weight of which, including its load, exceeds fourteen thousand (14,000) pounds. A trailer attached to any such vehicle shall be construed as being a part thereof.

SECTION TWO

All portions of any ordinance in conflict herewith are hereby repealed.

SECTION THREE

IT IS HEREBY ORDERED that the Clerk of this Board shall cause this ordinance to be published in The Willits News, a newspaper printed in the County of Mendocino, for at least one

MENDOCINO COUNTY

EMPLOYEES' RETIREMENT ASSOCIATION

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

MCERA has searched for but cab not find the resolution or other proof of adoption for MCERA as a participating employer. However, MCERA is operating in accordance with the understanding that the appropriate resolution was adopted.

WILLITS CEMETERY DISTRICT

April 14, 1970

PURSUANT TO GOVERNMENT CODE, SECTION 31557
AND SECTION 31557.2, IT IS HEREBY REQUESTED
THAT THE BOARD OF SUPERVISORS TAKE THE
NECESSARY STEPS TO INCLUDE THE EMPLOYEES OF
THE WILLITS CEMETERY DISTRICT, FOR COVERAGE
WITH THE MENDOCINO COUNTY EMPLOYEES' RETIRE-
MENT ASSOCIATION.

THIS MOTION ADOPTED BY THE WILLITS CEMETERY
DISTRICT ON THIS _____ DAY OF _____, 1970.

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

On June 23, 1970 the request for inclusion into MCERA from the Willits Cemetery District was referred to the Board of Retirement for approval. The Board of Retirement approved the inclusion of Willits Cemetery District into MCERA on July 10, 1970. The minutes of the Board of Retirement cannot be located. MCERA can provide a reconfirming statement upon the Service's request.

MINUTE ORDER FROM THE
BOARD OF SUPERVISORS

DATE: June 23, 1970

Supervisors Present:

Supervisors Absent: None

RETIREMENT BD

7/10/70
1
June 23, 1970

REPORT RE WELFARE BUILDING FINANCING:

Assistant District Attorney Stoen reported that in his opinion there is no reason legally why the Retirement Board cannot commit their funds to the Welfare Building project, and Mr. Ray, Treasurer of the Retirement Board, that by December the Board would have funds in the amount of \$270,000 to loan out, which is the amount required under the bids that were submitted, and later rejected.

REQUEST FOR INCLUSION IN RETIREMENT PROGRAM:

Request received from Cemetery District of the Redwoods, Willits, for inclusion of their employees in the Mendocino County Employees' Retirement program. Upon motion of Supervisor Sawyers, seconded by Supervisor Banker, and carried, IT IS ORDERED that this matter be referred to Mr. Ray, Treasurer of the Retirement Board.

*approved by
Ret Board
7-10-70 MR.*

STATE OF CALIFORNIA) ss.
COUNTY OF MENDOCINO)

I, VIOLA N. RICHARDSON, County Clerk of the Board of Supervisors, in and for the State of California, do hereby certify the foregoing is a correct copy of an order made by the Board of Supervisors and appears spread upon their minute book.

WITNESS my hand and the seal of said County of Mendocino this _____ day of _____

VIOLA N.
and ex-officio
of Supervisor

By _____
Deputy

TAB T

BENEFIT FORMULAS

APPLICABLE TO PARTICIPATING

EMPLOYERS OF MCERA

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- 1. General Member Formula**
- 2. Safety Member Formulas**

GENERAL MEMBER FORMULA

RESOLUTION NO. 02-018

RESOLUTION OF THE BOARD OF SUPERVISORS OF MENDOCINO COUNTY
EXTENDING THE RETIREMENT BENEFITS OF GOVERNMENT CODE SECTION
31676.12 20% AT 57 RETIREMENT FORMULA) TO EMPLOYEES IN THE
MENDOCINO COUNTY ASSOCIATION OF CONFIDENTIAL EMPLOYEES, THE
ASSOCIATION OF APPOINTED DEPARTMENT HEADS, THE MANAGEMENT
ASSOCIATION, ELECTED AND EXEMPT OFFICERS AND EMPLOYEES
COVERED BY BOARD OF SUPERVISORS RESOLUTION 92-209 WITH THE
EXCEPTION OF THOSE SUBJECT TO SAFETY RETIREMENT

WHEREAS, It is the desire of the Board of Supervisors to extend the retirement
benefits of Government Code Section 31676.12 2% of 57 retirement formula) to the
following employees and officers, pursuant to the terms and conditions of
Memorandums of Understanding executed by the following Bargaining Units, with the
exception of those individuals covered by safety retirement:

- * Confidential Employees Association
- e Association of Appointed Department Heads
- Management Association; and

WHEREAS, pursuant to Resolution 92-209 the benefits accorded to Appointed
Department Heads are made applicable to unrepresented management employees and
elected officials, including the retirement benefit accorded by Government Code Section
31676.12; and

WHEREAS, it is the intent of the Board of Supervisors to exclude those
unrepresented management employees and elected officials covered by Resolution 92-
209 who are subject to safety retirement.

NOW, THEREFORE, BE IT RESOLVED:

1. The retirement benefits provided by Government Code Section 31676.12
the 2% at 57 retirement formula) are extended to all employees, officers, department
heads and elected officials who are not covered by Safety retirement subject to
applicable memorandum of understanding provisions:


- * Confidential Employees' Association
- Association of Appointed Department Heads
- * Management Association
- All unrepresented management employees and elected officials as set
forth in Resolution 92-209

2. This Resolution makes applicable the provisions of Government Code Section 31676.12 effective the first full pay period following ratification of the memorandums of understanding with the above referenced employees' associations.

The above and foregoing Resolution was introduced by Supervisor Lucier, seconded by Supervisor Shoemaker, and carried this 15th day of January, 2002 by the following roll call vote:

AYES: Supervisors Delbar, Shoemaker, Lucier, Colfax and Campbell
NOES: None
ABSENT: None

WHEREUPON, the Chairman declared the Resolution adopted and, SO ORDERED.


CHAIRMAN, Board of Supervisors

ATTEST: KRISTI FURMAN
Clerk of said Board

By 

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

KRISTI FURMAN
Clerk of the Board

By: 

DEPUTY

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

CERL § 31676.11 also applies to MCERA. A resolution adopting CERL § 31676.11 has not been provided because a separate resolution adopting this section does not exist. CERL § 31676.11 was adopted as part of the system when it was initially established in 1948.

SAFETY MEMBER FORMULA

RESOLUTION NO. 02-071

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA, ENACTING GOVERNMENT CODE SECTION 31664.2 (THE 3% AT 55 SAFETY RETIREMENT FORMULA) EFFECTIVE THE FIRST FULL PAY PERIOD IN JULY 2005; ADOPTING THE PROVISIONS OF GOVERNMENT CODE SECTION 31581.2; AND MAKING EFFECTIVE THE FIRST FULL PAY PERIOD IN JANUARY 2003 - THE SEPARATION IN RETIREMENT COST OF LIVING ADJUSTMENTS (COLA) IN THE AMOUNTS AND AS RECOMMENDED BY THE RETIREMENT SYSTEM ACTUARY - SO THAT THERE WILL BE NO SHARING OF COLA COSTS AMONG COUNTY GENERAL RETIREMENT AND DSA SAFETY MEMBERS

WHEREAS, the Meyers-Milias-Brown Act requires that units of local government meet and confer with employee representatives for the purpose of developing wage and fringe benefit agreements; and,

WHEREAS, representatives of the Board of Supervisors of the County of Mendocino have met and conferred with representatives of the Mendocino County Deputy Sheriff's Association [DSA]; and,

WHEREAS, these representatives have met and conferred in good faith and have agreed upon salary and fringe benefits for their represented employees, including enhancement of safety retirement under the 3% at 55 formula set forth in Government Code Section 31664.2 to be effective the first full pay period in July 2005; and,

WHEREAS, it is the agreement of the parties and the intent of the Board of Supervisors to adopt the provisions of Government Code Section 31581.2 to take effect with Government Code Section 31664.2 (the 3% at 55 retirement formula), that the retirement contributions made by the County - including those for past service - do not become a vested interest of, and will not accrue to the employee; and

WHEREAS, it is the agreement of the parties that effective the first full pay period in January 2003, that the County will adjust the retirement contribution rates to reflect the Cost of Living Adjustments (COLA) as recommended by the Retirement System actuary which will result in no sharing of COLA costs among County general retirement members and DSA safety retirement members.

WHEREAS, the actuarial firm that represents the Retirement System has found that the salary and benefit increases represented by this resolution and order making the safety members of DSA eligible for enhanced safety retirement under the 3% at 55 formula effective the first full pay period in July 2005, shall not have a negative impact on the funding status of the Mendocino County Employees Retirement System as required by Government Code Section 23026; and,

WHEREAS, the Board of Supervisors of Mendocino County desires that this Resolution

enhancing safety retirement for classifications represented by DSA become effective the first full pay period in July 2005.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED:

1. The Mendocino County Board of Supervisors makes the provisions of Government Code Section 31664.2 (the 3% at 55 Retirement Formula) - effective the first full pay period in July 2005 for classifications / employees represented by DSA.
2. The Mendocino County Board of Supervisors makes the provisions of Government Code Section 31581.2 - that the retirement contributions made by the County, including those for past service, do not become a vested interest of, and will not accrue to the employee - effective simultaneous with the enactment and effect of Government Code Section 31664.2 (the 3% at 55 Retirement Formula).
3. Effective the first full pay period in January 2003, that the County will adjust the retirement contribution rates to reflect the Cost of Living Adjustments (COLA) as recommended by the Retirement System actuary which will result in no sharing of COLA costs among County general retirement members and DSA safety members.

The foregoing resolution and order was introduced by Supervisor Shoemaker, seconded by Supervisor Campbell, and carried this 16th of 2002 by the following call:

AYES: Supervisors Delbar, Shoemaker, Lucier, Campbell and Colfax
NOES: None
ABSENT: None

WHEREUPON, the Chairman declared the resolution adopted, AND SO ORDERED,

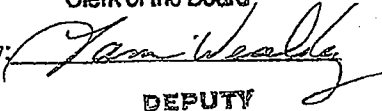

DAVID COLFAX, CHAIRMAN

ATTEST:


KRISTI FURMAN
Clerk of the Board

whereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

KRISTI FURMAN
Clerk of the Board

By: 
DEPUTY

TAB U

DOCUMENTS SUPPORTING EMPLOYER AGREEMENT TO PAY A PORTION OF EMPLOYEE CONTRIBUTIONS

Plan Name: Mendocino County Employees' Retirement Association **EIN:** 94-6116617 **Plan #:** 001

In some cases participating employers pay all or a portion of employee contributions to MCERA. This arrangement is agreed upon during the bargaining process between the employer and its various employee groups. These agreements are represented in the memorandum of understanding ("MOU") governing the relationship between each employer and employee group.

If the Service would like to review the MOUs, we can provide the relevant portions of the MOUs.