

Resolution No: 11-1019

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

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

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

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

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

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

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

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

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

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

Attest: Judy Zeller
Clerk to the Board

Judy Zeller

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

SECTION I. GENERAL RULES

A. Purpose and Effective Date

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

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

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

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

A. General Rule

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

B. Compliance with Provisions of the Code

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

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

C. Compliance with the CERL

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

SECTION III. DEFINITION OF COUNTY ADVANCE RESERVE

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

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