

# CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

## POLICY ON INTERNAL REVENUE CODE COMPLIANCE

### 1. Purpose of this Policy

- A. CCCERA is established as a qualified defined benefit plan under the County Employees Retirement Law of 1937, California Government Code sections 31450, *et seq.*, as amended from time to time ("CERL"), sections 401(a) and 414(d) of the Internal Revenue Code, such other provisions of the Internal Revenue Code as applicable, and applicable Treasury regulations and other guidance.
- B. The Retirement Board is authorized by law to adopt regulations and policies which are appropriate or necessary to maintain the qualified status of the plan.

### 2. Definitions

- A. All references to the Internal Revenue Code or IRC mean the Internal Revenue Code of 1986, as amended.
- B. The plan year is the calendar year.

### 3. Reversions of Employer Contributions (California Constitution, Article 16, Section 17(a); CERL Sections 31588.2 and 31595; IRC Section 401(a)(2))

The trust fund must not revert, and no contributions shall be permitted to be returned, to the employers prior to the satisfaction of all liabilities with respect to their employees and their beneficiaries under the trust.

### 4. Vesting (IRC Sections 401(a)(7); California Constitution, Article 16, Section 17(a); CERL Sections 31451, 31485.19, and 31485.22)

- A. A member shall be 100% vested in his or her service retirement benefit upon attaining eligibility for a service retirement benefit.
- B. A plan member shall be 100% vested in his or her accumulated contributions at all times.
- C. In the event of a full or partial termination of, or a complete discontinuance of employer contributions to, the Plan, the accrued benefits of the affected members under the Plan shall be 100% vested and nonforfeitable to the extent funded and to the extent required by federal law.

### 5. Required Minimum Distributions (IRC Section 401(a)(9); CERL Sections 31485.14 and 31706)

CCCERA will pay all benefits in accordance with a good faith interpretation of the requirements of IRC Section 401(a)(9) and the regulations in effect under that section, as

applicable to a governmental plan within the meaning of IRC Section 414(d). CCCERA is subject to the following provisions:

- A. For members attaining age 70 ½ on or after January 1, 2020, distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 72 or April 1 of the year following the calendar year in which the member terminates. (Setting Every Community Up for Retirement Enhancement Act (SECURE Act), Section 114.). For members attaining the age 70 ½ on or prior to December 31, 2019, distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains age 70½ or April 1 of the year following the calendar year in which the member terminates.
- B. The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.
- C. If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death. That is, a permissible joint and survivor annuity (one that satisfies E below) may be paid over the life or life expectancy of the beneficiary.
- D. If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:
  - (i) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death, or
  - (ii) distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- E. The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of IRC Section 401(a)(9)(G), and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
- F. The death and disability benefits provided by CCCERA are limited by the incidental benefit rule set forth in IRC Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the retirement system.
- G. Notwithstanding the other provisions of this Policy or the provisions of the Treasury Regulations, benefit options in place in 2002 may continue so long as the option

satisfies IRC Section 401(a)(9) based on a reasonable and good faith interpretation of that section.

**6. Limitation on Compensation (IRC Section 401(a)(17); CERL Section 31671;BOR Regulations VI)**

- A. Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member shall not exceed the applicable limit established by IRC Section 401(a)(17) as of the first day of the limitation year, as adjusted for cost of living increases in accordance with IRC Section 401(a)(17)(B)). Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.
- B. "Grandfather" Clause. As used in this section, the term "eligible member" means a person who first became a member of CCCERA prior to the plan year beginning after December 31, 1995 (January 1, 1996). Pursuant to section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, "eligible members" are not subject to the limits of IRC Section 401(a)(17). The limits referenced in subsection (A) above applies only to years beginning after December 31, 1995, and only to individuals who first become plan members in plan years beginning on and after January 1, 1996.

**7. Eligible Rollover Distributions (IRC Section 401(a)(31); CERL Sections 31485.15 and 31564)**

For purposes of compliance with IRC Section 401(a)(31), this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- A. "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under IRC Section 401(a)(9); and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution

merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in IRC Section 408(a) or (b) or to a qualified defined contribution plan described in IRC Section 401(a), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in IRC Section 401(a) or to an annuity contract described in IRC Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in IRC Section 408A. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in IRC Section 414(p).

B. "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

- (i) an individual retirement account ("IRA") described in IRC Section 408(a),
- (ii) an individual retirement annuity ("IRA") described in IRC Section 408(b),
- (iii) an annuity plan ("annuity contract") described in IRC Section 403(a),
- (iv) a qualified trust (such as CCCERA) described in IRC Section 401(a),
- (v) effective January 1, 2002, an annuity contract ("403(b) plan") described in IRC Section 403(b),
- (vi) effective January 1, 2002, a plan eligible under IRC Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from CCCERA, or
- (vii) effective January 1, 2008, a Roth IRA described in IRC Section 408A.
- (viii) effective December 19, 2015, a SIMPLE IRA that meets the 2-year requirements in IRC Section 408(p)

C. "Distributee" means an active member or former active member. It also includes the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC Section 414(p). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by IRC Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution

only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

- D. "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

**8. HEART Act (IRC Section 401(a)(37); CERL Section 31485.17)**

- A. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by IRC Section 401(a)(37), survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.
- B. Effective with respect to deaths or disabilities [or both] occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent permitted by IRC Section 414(u)(8), for benefit accrual purposes, and in the case of death, for vesting purposes, the member will be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
- C. Beginning January 1, 2009, to the extent required by IRC Sections 3401(h) and 414(u)(2), an individual receiving differential wage payments (while the individual is performing qualified military service, as defined in chapter 43 of title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under IRC Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**9. Reemployed Veteran (IRC Section 414(u); CERL Sections 31649, 31649.1 and 31649.5)**

Effective December 12, 1994, notwithstanding any other provision of CERL, the Board Regulations or this Policy, contributions, benefits and service credit with respect to qualified military service are governed by IRC Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, including requiring the employer to make, on behalf of returning service members, any plan contributions that the employer would have made if the service member had not been absent as a result of military service, the reemployed service member shall also be entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals that were missed during the qualified employee's military service if such missed contributions are paid

to the fund, and the reemployed service member's period of qualified military service shall be included for purposes of vesting.

**10. Qualified Domestic Relations Orders (IRC Section 414(p); CERL Article 8.4)**

If benefits are payable under CERL Article 8.4 pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in IRC Section 414(p), then the applicable federal income tax provisions of IRC Section 414(p) will apply.

**11. Adjustment of Employer Contributions for Replacement Benefit Program (IRC Section 415(m); CERL Sections 31899.4 and 31899.5)**

The adjustment in employer contributions required by CERL Section 31899.4 to the extent the employer pays benefits through the replacement benefit program shall be accomplished in the following manner:

- A. For an employer contributing on a monthly basis, the contribution amount the employer is required to pay to CCCERA in any month shall be reduced by the amount the employer pays from the replacement benefit program in that month; and
- B. For an employer contributing on an annual basis, any make-up payment due from the employer at the end of the year or, if insufficient, the amount of contributions due from the employer for the next year, shall be reduced by the amount the employer paid from the replacement benefit program during that year.

Under no circumstances shall any amounts be transferred from CCCERA to the replacement benefit program.

**12. Prohibited Transactions (IRC Section 503(b))**

Effective as of July 1, 1989, the Board may not engage in a transaction prohibited by IRC Section 503(b). For example, prohibited transactions include the following transactions with certain related parties such as a plan sponsor: a loan without adequate interest or security, the payment of excessive compensation, the purchase of securities or property for more than adequate consideration, or the sale of securities or property for less than adequate consideration.

**13. Distribution General Requirements (IRC 401(a)(36); CERL Section 31485.20; IRC Section 402(d)(4)(A)(iii); CERL Section 31485.21)**

Effective January 1, 2015, members may only receive distributions from the plan in compliance with permitted distributions (*e.g.*, the earlier of death, disability, separation from service, attainment of normal retirement age) rules under (IRC Section 401(a) and Treasury Regulation Section 1.401(b)(1)(i)).

**14. Review**

This policy shall be reviewed by the Board at least every three (3) years and may be amended at any time.

**15. History**

This policy was adopted on: December 8, 2010

Amended: July 11, 2018, February 12, 2020