

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

**POLICY ON INTERNAL REVENUE CODE SECTION 415 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 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.
- C. For IRC section 415 testing purposes, the limitation year is the calendar year.

**3. Limitations on Contributions and Benefits (IRC Section 415; CERL Sections 31538 and 31899 et seq.)**

- A. As provided in CERL Chapter 3.9, Section 31899 et seq., benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of IRC Section 415 for a qualified pension plan. Notwithstanding any other law, the limitation with respect to a person who first became a member under the plan prior to January 1, 1990 shall not be less than the accrued benefit of the member under the plan (determined without regard to any amendment of this plan adopted after October 14, 1987).
- B. *Basic 415(b) Limitation.*
  - (i) On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC Section 415(b)(1)(A), subject to the applicable adjustments in IRC Section 415(b) and subject to any additional limits that may be specified in CERL and this Policy, and subject to the grandfather provisions of CERL Section 31899. In no event shall such member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC Section 415(d) and the regulations thereunder.
  - (ii) For purposes of IRC Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary

benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to IRC Section 415(n)) and to rollover contributions (as defined in IRC Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

C. *Adjustments to Basic 415(b) Limitation for Form of Benefit*

If the benefit under the plan is other than the form specified in subsection (B)(ii), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

- (i) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor (spousal) annuity<sup>1</sup>, then the preceding sentence is applied by either reducing the IRC Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation IRC Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:
- (ii) For a benefit paid in a form to which IRC Section 417(e)(3) (annuity, not lump sum, benefit) does not apply, the actuarially equivalent straight life annuity benefit that is the greater of:
  - (a) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or
  - (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and, for plan years after December 31, 2008, the applicable mortality tables described in IRC Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service ("IRS") guidance implementing IRC Section 417(e)(3)(B)); or
- (iii) For a benefit paid in a form to which IRC Section 417(e)(3) (lump sums) applies, the actuarially equivalent straight life annuity benefit that is the greatest of:
  - (a) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular

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<sup>1</sup> A qualified joint and survivor annuity ("QJSA") means a 50% - 100% joint and survivor annuity with a spouse (same sex or opposite sex) as a designated beneficiary. No adjustment is required for the actuarial value of a QJSA that is fully or partially subsidized. See Treas. Reg. Section 1.415(b)-1(c)(4). If the survivor is a non-spouse beneficiary or domestic partner (thus, it is not a QJSA) then the entire benefit must be converted into a single-life annuity and tested under IRC Code Section 415(b).

form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan;

- (b) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and, for plan years after December 31, 2008, the applicable mortality tables described in IRC Section 417(e)(3)(B) (Notice 2008-85 or any subsequent IRS guidance implementing IRC Section 417(e)(3)(B)); or
- (c) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation IRC Section 1.417(e)-1(d)(3) (using the rate in effect for the month prior to retirement) and, for plan years after December 31, 2008, the applicable mortality tables described in IRC Section 417(e)(3)(B) (Notice 2008-85 or any subsequent IRS guidance implementing IRC Section 417(e)(3)(B)), divided by 1.05.
- (iv) In lieu of converting the optional form of benefit into a single-life annuity, the actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above subsections (ii) and (iii).
- (v) In the event that a qualified joint and survivor (spousal) annuity includes temporary benefits payable to minor children, no adjustment under 415(b) is required because the benefit remains a qualified joint and survivor annuity.

*D. Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- (i) Any ancillary benefit (usually temporary, not annual or monthly) which is not directly related to retirement income benefits (e.g. burial benefits would be ancillary);
- (ii) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (iii) Any other benefit not required under IRC Section 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of IRC Section 415(b)(1).

*E. Other Adjustments in 415(b) Limitation.*

- (i) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with

Treasury Regulations pursuant to the provisions of IRC Section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age 62.

The reduction in the limit shall be based on the following set of assumptions, whichever produces the lower limit:

- (a) the interest rate and mortality table or tabular factor specified in the plan for commencement prior to the age of 62, or
  - (b) 5% and for plan years after December 31, 2008, the applicable mortality tables described in IRC section 417(e)(3)(B) (Notice 2008-85 or any subsequent IRS guidance implementing IRC Section 417(e)(3)(B)).
- (ii) In the event the member's benefit is based on at least 15 years of service as a full-time employee of any police (sheriff's) or fire department or on 15 years of military service, the adjustments provided for in (i) above shall not apply. There is no age reduction for any employee of a police or fire department, regardless of whether that person otherwise qualifies as a public safety officer, but there is an age reduction for Safety Members who are not employed by a police or fire department. The application of this rule depends on whether the employer is a police department or fire department of the county, rather than on the job classification of the individual member. It is necessary that the employer (or at least the appropriate division of that employer) function as a police or fire department. The requirement of 15 years of service can be satisfied with a combination of police/fire services and military service.
- (iii) The reductions provided for in (i) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

F. *Less than 10 Years of Participation Adjustment for 415(b) Limitations.*

The maximum retirement benefits payable to any member who has completed less than 10 years of participation shall be the amount determined under subsection (B) multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is 10. The service reduction provided by this subsection cannot reduce the maximum benefit below 10 percent. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

G. *Ten Thousand Dollar (\$10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten

thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

H. *Effect of COLA and Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under IRC Section 415(b) (the "Limit") to a member with no lump sum benefit, a member's annual benefit, including any cost of living increases under CERL Article 16.5, shall be tested under the then applicable benefit Limit including any adjustment to the IRC Section 415(b)(1)(A) dollar limit under IRC Section 415(d), and the regulations thereunder.

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by IRC Section 415(b) and applicable Treasury Regulations.

I. *IRC Section 415(c) limitations on contributions and other additions.*

415(c) limitations on contributions will only apply to CCCERA if the member has after-tax member contributions or service purchase after-tax amounts or other annual additions. All such annual additions, with respect to a member, may not exceed the lesser of \$40,000 (as adjusted pursuant to IRC Section 415(d)) or 100% of the member's compensation.

- (i) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.
- (ii) For purposes of applying IRC Section 415(c) and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation IRC Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under IRC Section 414(h) shall not be treated as compensation.
- (iii) This section applies solely for purposes of IRC Section 415 testing. Compensation will be defined as wages within the meaning of IRC Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under IRC Section 3401(a) that limit the remuneration included in wages based on the nature or location of the

employment or the services performed (such as the exception for agricultural labor in IRC Section 3401(a)(2)).

- (a) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of IRC Section 132(f)(4).
- (b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2<sup>1</sup>/<sub>2</sub> months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:
  - (I) the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
  - (II) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or
  - (III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.
- (iv) Any payments not described in paragraph (iii)(b) above are not considered compensation if paid after severance from employment, even if they are paid within 2<sup>1</sup>/<sub>2</sub> months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of IRC Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

- (v) An employee who is in qualified military service (within the meaning of IRC Section 414(u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).
- (vi) Back pay, within the meaning of Treasury Regulation IRC Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- (vii) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this section shall not exceed the annual limit under IRC Section 401(a)(17).

J. *Service Purchases under IRC Section 415(n).*

- (i) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC Section 415(n) will be treated as met only if:
  - (a) the requirements of IRC Section 415(b) are met (without regard to the age reduction under IRC Section 415(b)(2)(C)), determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC Section 415(b), or
  - (b) the requirements of IRC Section 415(c) are met, (without regard to the pay limit under IRC Section 415(c)(1)(B)) determined by treating all such contributions as annual additions for purposes of IRC Section 415(c).
- (ii) For purposes of this subsection the term "permissive service credit" means service credit—
  - (a) recognized by the plan for purposes of calculating a member's benefit under the plan,
  - (b) which such member has not received under the plan, and

- (c) which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.
- (iii) The plan does not allow for the purchase of "nonqualified service credit."
- (iv) For purposes of subparagraph (iii), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, 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, any 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 a repayment described in IRC Section 415(k)(3)),
  - (b) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (a)) of an education organization described in IRC 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 clause (a), or
  - (d) military service (other than qualified military service under IRC Section 414(u)) recognized by the plan.

In the case of service described in clause (a), (b), or (c), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

- (v) In the case of a trustee-to-trustee transfer after December 31, 2001, to which IRC Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—
  - (a) the limitations on nonqualified service credit under IRC Section 415(n)(3)(B) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
  - (b) the distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.



- (vi) For an eligible member, the IRC Section 415(c)(1) limitation shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the plan before January 1, 1998.
- (vii) Any repayment of contributions (including interest) shall not be taken into account for IRC Section 415 purposes. So long as the amount repaid does not exceed the amount refunded, plus interest, IRC Section 415(c) will not apply to the repayment. However, the restored benefit is to be treated for testing purposes as the original benefit would have been treated. (See also Section L below).
- (viii) In situations involving redeposit by the member of funds assigned to an alternate payee due to a domestic relations order, a member may make payments with post-tax dollars or complete a trustee-to-trustee transfer of 457 plan contributions to accomplish the redeposit. The benefit attributable to such amounts redeposited is not included in the benefit which is tested against the 415(b) limitation (provided that if post-tax dollars are used, the post-tax dollars satisfy the modified 415(c) limit described in paragraph (i)(b) above). The required method for allocating a portion of after-tax employee contributions, for purposes of excluding this amount from the annual benefit to be tested, is established in Reg. Section 1.411(c)-1(c). The method requires calculation of the after-tax employee contributions, plus interest, at rates specified by the regulations.

*K. Modification of Contributions for 415(c) and 415(n) Purposes.*

Notwithstanding any other provision of law to the contrary, CCCERA may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in IRC Section 415 by using the following methods:

- (i) If the law requires a lump sum payment for the purchase of service credit, CCCERA may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC Section 415(c) or 415(n).
- (ii) If payment pursuant to subparagraph (i) will not avoid a contribution in excess of the limits imposed by IRC Section 415(c) or 415(n), CCCERA may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

*L. Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under

the plan or another governmental plan maintained by CCCERA shall not be taken into account for purposes of IRC Section 415, in accordance with applicable Treasury Regulations.

For example, if a member takes a refund and later returns to CCCERA membership, the member may redeposit the contributions to re-establish service credit. The member's service credit is restored and the 415 limit is applied as if the member had never left.

M. *Aggregation of Limits.*

(i) Participation in Other Qualified Plans

- (a) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in IRC Section 414(j) maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.
- (b) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in IRC Section 414(i) maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.
- (c) All defined benefit plans of the same employer must be aggregated for testing purposes and all defined contribution plans of the same employer must be aggregated. However, defined benefit and defined contribution plans are not combined for testing purposes. Thus, for example, if an employee, over the course of his or her career, is employed by Contra Costa County in different positions that are covered under both the CCCERA defined benefit plan and the Contra Costa County Deferred Compensation Plan, the benefit under both plans is not aggregated for purposes of IRC Section 415.

(ii) Alternate Payees/QDROs

- (a) Benefits paid to alternate payees of members pursuant to a QDRO must be treated as if the benefit were paid to the participant for purposes of applying the IRC Section 415 limits.
- (b) If the alternate payee is a former spouse and if the QDRO provides that the former spouse is to be treated as a spouse, then the value of the alternate payee's spousal benefit can, in effect, be disregarded for purposes of the 415(b) limits, under the normal rule that any portion of a QJSA need not be taken into account for 415(b) testing.

N. *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

**4. Review**

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

**5. History**

This policy was adopted on: 12/8/2010

Amended: 1/9/2013, 7/11/2018, 9/8/2021, 8/9/2023