

**RESOLUTION OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA**

**RESOLUTION APPROVING)
REGULATIONS ADOPTED)
BY THE BOARD OF RETIREMENT)
IN ORDER TO RETROACTIVELY)
AMEND THE SANTA BARBARA COUNTY)
EMPLOYEES' RETIREMENT SYSTEM)
(SBCERS) PLAN TO COMPLY WITH)
THE APPLICABLE REQUIREMENTS OF)
FEDERAL LAW)**

Resolution No. _____

WHEREAS, it is in the best interest of employees and retirees of the County of Santa Barbara ("County"), and the beneficiaries of those employees and retirees, that the Santa Barbara County Employees' Retirement System ("SBCERS") be maintained as a qualified pension plan under Internal Revenue Code ("Code") Section 401(a);

WHEREAS, on October 28, 2013, the Internal Revenue Service ("IRS") issued a Voluntary Correction Program Compliance Statement ("Compliance Statement") and a Favorable Determination Letter ("Determination Letter") in which the IRS made a favorable determination on the qualified status of SBCERS, which indicates that in the opinion of the IRS, the terms of SBCERS conform to the requirements of Code Section 401(a);

WHEREAS, both the Compliance Statement and the Determination Letter are conditioned upon adoption of certain regulations that had been submitted to the IRS;

WHEREAS, the attached Regulations to Achieve Compliance with the Internal Revenue Code for the Santa Barbara County Employees' Retirement System are the regulations necessary to satisfy the IRS's condition; and

WHEREAS, the Board of Supervisors recommended the Regulations to the Board of Retirement on December 10, 2013, and the Board of Retirement adopted the Regulations on December 11, 2013;

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

Approval of Regulations

The Regulations to Achieve Compliance with the Internal Revenue Code for the Santa Barbara County Employees' Retirement System are hereby approved by the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara,
State of California this ____ day of _____, 2014 by the following vote:

AYES:

NOES:

ABSENT:

CHAIR, BOARD OF SUPERVISORS

ATTEST:


MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: _____ (SEAL)
Deputy Clerk

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, C.P.A.
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____

**REGULATIONS TO ACHIEVE COMPLIANCE WITH
THE INTERNAL REVENUE CODE
FOR THE
SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM**

Section 1. Purpose of this Regulation

(a) The retirement system is established as a qualified defined benefit plan under the County Employees Retirement Law of 1937 ("CERL") as amended from time to time, pursuant to sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable Treasury regulations and other guidance.

(b) The board shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of the plan.

Section 2. Definitions

(a) All references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended.

(b) The plan year is the fiscal year commencing July 1.

(c) For 415 testing purposes, the limitation year is the calendar year.

Section 3. Compliance with Code Sections 401(a)(7) and 401(a)(8) for vesting and forfeitures:

(a) A plan member shall be 100% vested in his or her accumulated contributions at all times.

(b) In conformity with section 401(a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

Section 4. Compliance with Code Section 401(a)(9) for Required Minimum Distributions (see, CERL 31706 and 31787.5(b)):

The retirement system will pay all benefits in accordance with a good faith interpretation of the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code. The retirement system is subject to the following provisions:

(a) 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 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall

begin distribution of the monthly benefit as required by this rule in the form provided in CERL Section 31761.

(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) The retirement system pursuant to a qualified domestic relations order may establish separate benefits for a member and nonmember.

(d) 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.

(e) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(1) 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

(2) distributed within five years of the member's death.

(f) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(g) The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in section 401(a)(9)(G) of the Internal Revenue Code 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.

(h) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

Section 5. Compliance with Code Section 401(a)(17) for the Limitation on Compensation (see, CERL 31671):

(a) Effective with respect to plan years beginning on and after July 1, 1996, and before July 1, 2002, the annual compensation of a plan member which exceeds \$150,000 (as adjusted for cost-of-living increases under section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee and employer contributions to or benefits due from the retirement system. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of

section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age 19 before the close of the year.

(b) Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or contributions due for any plan year. 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). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. 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.

(c) As used in this section, the term "eligible member" means a person who first became a member of the retirement system prior to the plan year beginning after December 31, 1995. 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 section 401(a)(17) of the Internal Revenue Code, and the maximum compensation used in computing employee and employer contributions to or benefits due from the retirement system for eligible members shall be the maximum amount allowed by the retirement system to be so used on July 1, 1993. The limits referenced in subsections (a) and (b) above apply only to years beginning after December 31, 1995, and only to individuals who first become plan members in plan years beginning on and after July 1, 1996.

Section 6. Compliance with Code Section 401(a)(25) for Actuarial Assumptions (see, CERL Section 31456):

Effective as of July 1, 1989, SBCERS will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board of Retirement or Board of Supervisors by rule; such benefits will not be subject to employer discretion. The Board rules adopted for this purpose are incorporated into CERL 31456 as part of the plan document.

Section 7. Compliance with Code Section 401(a)(31) for Eligible Rollover Distributions (see, CERL 31629.5):

For purposes of CERL 31629.5 and compliance with section 401(a)(31) of the Internal Revenue Code, 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 section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. 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 to an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, 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 on or after January 1, 2008, to a Roth IRA described in section 408A of the Internal Revenue Code. 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 section 414(p) of the Internal Revenue Code.

(b) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(1) an individual retirement account described in section 408(a) of the Internal Revenue Code,

(2) an individual retirement annuity described in section 408(b) of the Internal Revenue Code,

(3) an annuity plan described in section 403(a) of the Internal Revenue Code,

(4) a qualified trust described in section 401(a) of the Internal Revenue Code,

(5) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code,

(6) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code 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 the retirement system, or

(7) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code.

(c) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code. 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.

Section 8. Compliance with Code Section 401(a)(37) and the HEART Act (see, CERL Section 31642(c)).

(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 section 401(a)(37) of the Internal Revenue Code, 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.

(b) Beginning January 1, 2009, to the extent required by sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in chapter 43 of title 38, United State Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation, but contributions attributable to such differential wage payments shall not be made unless and until the member returns to active employment and makes up the missed contributions. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 9. Compliance with Code Section 414(p) for Qualified Domestic Relations Orders (see, CERL Sections 31685 – 31685.96).

If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in section 414(p) of the Internal Revenue Code, then the applicable requirements of section 414(p) of the Internal Revenue Code will be followed by the retirement system.

Section 10. Compliance with Code Section 414(u) for Reemployed Veterans (see, CERL Section 31642(c)):

Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 11. Compliance with Code Section 415 Limitations on Contributions and Benefits (see, CERL Sections 31460, 31899, 31899.2, and 31899.3; BOS Res. No. 02-281; and BOR Res. Nos. 2002-03, -01, -02, and -03):

(a) Notwithstanding any other provisions of the retirement system law to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of section 415 of the Internal Revenue Code for a qualified pension plan.

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) 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 section 414(j) of the Internal Revenue Code 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.

(2) 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 section 414(i) of the Internal Revenue Code 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) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a 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 section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of section 415(b) of the Internal Revenue Code, 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 section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in section

415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

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

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) 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 annuity, then the preceding sentence is applied by either reducing the section 415(b) of the Internal Revenue Code 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 section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(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 (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions:

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

(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 (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code); 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 section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate the in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) *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:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of section 415(b)(1) of the Internal Revenue Code.

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

(1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of section 415(b) of the Internal Revenue Code, 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 sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Less than Ten (10) Years of Service Adjustment for 415(b) Limitations.*

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

(h) *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.

(i) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following will apply:

(1) a member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under CERL 31870.1;

(2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under CERL 31870.1, shall be tested under the then applicable benefit Limit including any adjustment to the section 415(b)(1)(A) of the Internal Revenue Code dollar limit under section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(j) *Effect of COLA with a Lump Sum Component on 415(b) Testing.*

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 section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

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

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to section 415(d) of the Internal Revenue Code) or 100% of the member's compensation.

(1) 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.

(2) For purposes of applying section 415(c) of the Internal Revenue Code 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 section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of section 3401(a) of the Internal Revenue Code 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 sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under section 3401(a) of the Internal Revenue Code 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 section 3401(a)(2) of the Internal Revenue Code).

(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 section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. 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 section 132(f)(4) of the Internal Revenue Code.

(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 2½ 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) the payment is pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment 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.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ 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 section 414(u)(1) of the Internal Revenue Code) 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.

An employee who is in qualified military service (within the meaning of section 414(u)(1) of the Internal Revenue Code) 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).

(C) Back pay, within the meaning of Treasury Regulation 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.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code.

(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 the retirement system shall not be taken into account for purposes of section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(m) *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.

Section 12. Compliance with Code Section 503(b) for Prohibited Transactions.

Effective as of July 1, 1989, the board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.