

**RESOLUTION NO. \_\_\_\_\_**

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

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**RESOLUTION APPROVING REVISION AND RENUMBERING OF EXISTING  
BOARD OF RETIREMENT REGULATIONS AND ADDITION OF ARTICLE I  
“PURPOSE, SCOPE AND AMENDMENTS” AND ARTICLE VIII “INTERNAL  
REVENUE CODE COMPLIANCE.”**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, Government Code §31525 provides that the Board of Retirement (“BOR”), with the approval of the Board of Supervisors, may establish regulations that govern the operation of San Mateo County Employees’ Retirement Association (“SamCERA”) that are not inconsistent with the County Employees' Retirement Law (“CERL”); and

**WHEREAS**, on January 29, 2014, the Internal Revenue Service (“IRS”) issued a favorable tax determination letter to SamCERA, and as part of its submission process, SamCERA submitted proposed regulations to the IRS and said regulations need to be adopted by the Board of Supervisors; and

**WHEREAS**, the proposed regulations reaffirm and clarify existing SamCERA practices and confirm that SamCERA’s practices shall be in accordance with the Internal Revenue Code and related Treasury Regulations; and

**WHEREAS**, Article VIII “Internal Revenue Code Compliance” to be added to the regulations addresses areas such as: maximum annual amount of member

contributions; maximum annual amount of compensation earnable/pensionable compensation to be counted toward pension calculations; maximum annual amount of benefits paid to members/beneficiaries; allowable rollovers of funds into and out of member's accounts; and procedures and limits for minimum required distributions; and

**WHEREAS**, the proposed revisions to the regulations also update the regulations so that they are consistent with the terms and conditions of the retirement plan as well as administrative matters, these proposed revisions reflect among other items that: the BOR meeting time shall be 10:00 a.m. instead of 1:00 p.m.; employees whose tenure is temporary; seasonal and intermittent have been and will continue to be excluded from membership consistent with state law; Plans 1, 2 and 4 are not the only contributory plans; the ability to file written notice to purchase Additional Retirement Credit ended December 31, 2012, the ability to file a written notice to purchase prior military time under Government Code §31641.97 ended on January 1, 1995; and references to "registered domestic partners" have been added where certain regulations refer to "spouses"; and

**WHEREAS**, the BOR has approved the revision and renumbering of its existing regulations and the addition of Article I "Purpose, Scope And Amendments" and Article VIII "Internal Revenue Code Compliance; " and

**WHEREAS**, this Board of Supervisors has reviewed the proposed revisions and renumbering of the BOR regulations and the addition of Article I "Purpose, Scope And Amendments" and Article VIII "Internal Revenue Code Compliance" and desires to adopt such changes;

**NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that existing Board of Retirement regulations are revised and renumbered and Article I “Purpose, Scope And Amendments” and Article VIII “Internal Revenue Code Compliance ” are added to read as attached:

\* \* \* \* \*



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## SamCERA Board Regulations

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**ARTICLE I.**  
**PURPOSE, SCOPE AND AMENDMENTS**

**1.1 Purpose and Scope.** In accordance with California Government Code section 31525, the regulations set forth herein are effective as of October 1, 2014 and reaffirm and clarify the existing practices of the San Mateo County Employees' Retirement Association ("SamCERA").

**1.2 Amendments.** These regulations may be amended from time to time at any meeting of the Board by an affirmative vote of at least five (5) members of the Board, and shall be submitted to the San Mateo County Board of Supervisors for ratification.

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**ARTICLE II.**  
**BOARD OFFICERS AND CHIEF EXECUTIVE OFFICER**

- 2.1 Election of Chair:** At the first regular meeting in July, the Board of Retirement shall elect one of its members chair for a term of one year or until his or her successor is duly elected and qualified. The Chair shall preside at all meetings of the Board, shall appoint all committees and shall perform all duties incidental to that office.
- 2.2 Election of Vice Chair:** At the first regular meeting in July, the Board of Retirement shall elect one of its members vice chair for a term of one year or until his or her successor is duly elected and qualified. In the Chair's absence or inability to act, the Vice Chair shall take the place and perform the duties of that office.
- 2.3 Election of Secretary:** At the first regular meeting in July, the Board of Retirement shall elect one of its member's secretary for a term of one year or until his or her successor is duly elected and qualified. The Secretary shall attest to Resolutions and other such documents for the Board. In the Chair's and Vice Chair's absence or inability to act, the Secretary shall take the place and perform the duties of the Chair.
- 2.4 Filling of Vacancy in Office:** In the event of a vacancy in the office of chair, vice chair or secretary, the Board of Retirement shall, at its next regular meeting, elect one of its members to fill such vacancy for the remainder of the term.
- 2.5 Administrator's/Chief Executive Officer's Authority:** The Board shall adopt, and may amend from time to time, a formal Delegation of Authority which sets forth the specific powers and duties assigned to the Administrator who shall have the title of Chief Executive Officer. The Chief Executive Officer shall adhere to the terms and conditions of the Delegation of Authority in all matters.

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## ARTICLE III. MEETINGS

- 3.1 Public Meetings:** All business of the Board shall be conducted in conformance with the requirements of California's public meeting law, known as the Ralph M. Brown Act, commencing at Government Code section 54950.
- 3.2 Quorum:** Five trustees of the Board constitute a quorum.
- 3.3 Motions:** Motions approved by affirmative votes of less than five trustees shall have no force and effect. The Chair should vote on all motions.
- 3.4 Regular Meetings:** Regular meetings of the Board shall be held on the Fourth Tuesday of each month. Meetings shall begin at 10:00 a.m. Meetings shall be held in SamCERA's offices. The Board may cancel and or approve a change in the date, time and/or location of meetings within the County, if the proposed change is included on the agenda of a regular meeting.
- 3.5 Special Meetings:** Special meetings of the Board of Retirement may be called in the manner provided by Government Code section 54956.
- 3.6 Order Business:** The Board shall conduct its business in accordance with the provisions of the Government Code and these regulations.
- 3.7 Preparation of Agenda:** The Chief Executive Officer shall be responsible for the preparation of the Board's agenda, which shall be approved by the chair prior to publication.
- 3.8 Communications to the Board:** Whenever possible, communications and requests to the Board should be made in writing. Oral communications and requests will be accepted during Board meetings. The substance of such requests and the actions of the Board thereon shall be recorded in the minutes.
- 3.9 Meeting Minutes:** The minutes of the Board's meetings shall reflect the time and place of each meeting of the Board, the names of trustees present, all official acts of the Board, the votes cast by trustees when by roll call vote, a trustee's dissent or approval and reasons when requested. The minutes will be presented for approval at the next regular meeting. When called upon by the Chair, the Chief Executive Officer shall take a formal roll call vote in alphabetical order, with the Chair voting last. The minutes as approved, signed by the Chair, shall form part of the permanent records of the Board.

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## **ARTICLE IV. ELECTION OF TRUSTEES**

**4.1 Regular Elections:** Regular Elections shall be held on the second Monday in June of the years in which the terms of elected Trustees expire. The Elections Officer for the County of San Mateo or his or her designee, herein after referred to in this Article as "Elections Officer" shall be responsible for the conduct of the election and shall report directly to the Board in all matters pertaining to the election of trustees.

**4.2 List of Eligible Candidates and Nominators and the List of Eligible Voters:** The Chief Executive Officer shall provide to the Elections Officer a copy of the Nominating Petition, the "List of Eligible Candidates and Nominators", and the "List of Eligible Voters" and other necessary election materials. The "List of Eligible Candidates and Nominators" shall include those names of members who are eligible to sign Nomination papers and/or run for office as set forth in sections 4.4 and 4.5, and shall be provided no later than the Friday prior to the third Monday in April of the election year. The "List of Eligible Voters" shall include those names of members who are eligible to vote in the election as set forth in section 4.13, and shall be provided no later than the Thursday prior to the first day ballots may be mailed to those voters.

**4.3 Notice of Election:** The Chief Executive Officer shall distribute a Notice of Election on or before the first Monday in April of election years. The Notice shall include, but not be limited to, the Qualification of Candidates, the process for obtaining copies of the Nominating petition and Election Regulations, the Date of the Election, and the name and address of the Elections Officer.

**4.4 Qualifications of Candidates:** A candidate for Second or Third Trustee shall be a General Member of SamCERA. A candidate for Seventh Trustee shall be a Safety Member of SamCERA. A candidate for Eighth Trustee shall be a Retired Member of SamCERA. A candidate for Eighth Trustee Alternate shall be a Retired Member of SamCERA. To be eligible, a candidate shall be a member of his or her respective group at the close of the pay period immediately preceding the beginning of the Nomination/Declaration of Candidacy period. The Elections Officer shall compare the names of candidates with the "List of Eligible Candidates and Nominators." If the Elections Officer finds that the candidate does not meet the qualifications set forth in this Section and Section 4.5, the Elections Officer shall disqualify the candidate.

**4.5 Nominating Petitions/Declaration of Candidacy:** On and after the third Monday in April, qualified candidates may obtain a Nominating Petition or Declaration of Candidacy, a copy of the Code of Fair Campaign Practices as it appears in the California Elections Code, and a copy of these Election Regulations from the Elections Officer. Candidates for Second, Third and Seventh Trustee shall be nominated by a petition signed by not less than ten SamCERA Members eligible to sign the candidate's petition. SamCERA's General Members are eligible to sign a petition for a candidate for Second or Third Trustee. SamCERA's Safety Members are eligible to sign a petition for a candidate



for Seventh Trustee. SamCERA's Retired Members are eligible to nominate themselves as a candidate either for the Eighth Trustee or the Eighth Trustee Alternate by filing a Declaration of Candidacy with the Elections Officer. SamCERA's Retired Members may only nominate themselves to one position. To be eligible to sign petitions, or nomination papers, a member's name shall be included on the "List of Eligible Candidates and Nominators." No member shall sign more than one Nominating Petition for each election. Signed Nominating Petitions and Declarations of Candidacy must be filed with the Elections Officer no later than 5:00 p.m. of the first Monday in May. Candidates who file Nominating Petitions after the deadline will be disqualified. Prospective candidates shall appear in person to receive candidate papers from and to deliver candidate papers to the Elections Officer. If a prospective candidate is unable to appear in person, they shall designate in writing an agent to receive and/or deliver the candidate's Nomination Papers or Declaration of Candidacy on their behalf.

**4.6 Withdrawal:** Candidates may withdraw from the election no later than 5:00 p.m. of the first Monday in May by filing a written statement of withdrawal with the Elections Officer.

**4.7 Qualification of Candidates and Nominators:** The Elections Officer shall compare the names on Nominating Petitions and Declarations of Candidacy with the "List of Eligible Candidates and Nominators." If the Elections Officer finds that less than the number of qualified signatures specified in Section 4.5 have been submitted, the Elections Officer shall disqualify the candidate.

**4.8 Fewer than Two Qualified Candidates:** If the Elections Officer determines that there is one qualified candidate, the Elections Officer shall cancel the election and certify the single candidate elected. If there are no qualified candidates, the Elections Officer shall notify the Board who shall reschedule the election. The Chief Executive Officer shall re-notice the Election. Any election that has been re-noticed shall be held in accordance with the provision for Special Elections.

**4.9 Candidate Statements:** The Elections Officer shall accept, reproduce and include with the ballot, a Candidate Statement listing the name of the candidate and no more than 300 words. Candidate Statements shall be limited to a recitation of the candidate's own personal background and qualifications and shall not make any reference to other candidates or to another candidate's qualifications. Statements that do not meet these requirements shall not be accepted, but may be resubmitted up to the filing deadline. The counting of words will be in accordance with the California Elections Code. If the Elections Officer determines that an acceptable Candidate Statement is not submitted by the deadline, the candidate will not have one included with the ballot. Candidate Statements must be filed with the Elections Officer no later than 5:00 p.m. of the first Monday in May. Statements shall be printed as submitted. No candidate, for any reason, may withdraw or change his or her Candidate's Statement after this deadline. Statements filed pursuant to this section shall remain confidential until the expiration of the filing deadline.

**4.10 Challenges to Statements:** No later than 5:00 p.m. on the first Thursday in May following the first Monday in May, a candidate may challenge by writ of mandate or injunction filed with the Superior

Court of San Mateo County, which requests that the decision of the Elections Officer to accept or reject a candidate's statement be reversed and/or that the statement in question is false, misleading, or inconsistent with the requirements of Section 4.9. The peremptory writ of mandate or injunction shall be issued only upon clear and convincing proof and a finding that an order would not substantially interfere with the printing or distribution of official election materials.

**4.11 Ballots:** The Elections Officer shall certify for inclusion on the ballot the names of qualified candidates who submitted Nominating Petitions containing the number of qualified signatures specified in section 4.5. The Elections Officer shall determine by lot the order in which candidates shall appear on the ballot. There can be elections for multiple trustee positions on a single ballot. There is no provision for write-in candidates.

**A. Mail Ballots:** The Elections Officer shall provide for the preparation of a number of ballots sufficient to supply one to each SamCERA Member eligible to vote in each election. The Elections Officer shall provide for the mailing of ballots to the member's home address. Ballots shall be mailed no earlier than the third Friday in May and no later than the fourth Friday in May. Ballots mailed shall include a return envelope bearing prepaid postage. The Elections Officer shall make available a replacement ballot upon request by any eligible member who lost or did not receive his or her ballot. Requests may be made in person, in writing, by e-mail, fax or by telephone. A replacement ballot will not be provided to anyone other than the member who requested the replacement ballot. Candidates are specifically prohibited from handling ballots, whether voted or unvoted, sealed or unsealed, other than their own. Voted ballots must be received by the Elections Officer on or before Election Day. Any voted ballot that is U.S. Postmarked on or before Election Day and received by the Elections Officer on or before 5:00 p.m. on the Friday following the Election Day shall also be counted.

**B. Electronic voting:** Upon request of the Board, the Elections Officer shall provide for the distribution of ballots and voting through an electronic voting system in addition to or in lieu of mailed ballots. The Elections Officer shall make available a replacement ballot upon request by any eligible member who lost or did not receive his or her electronic ballot. Requests may be made in person, in writing, by e-mail, fax or by telephone. A replacement ballot will not be provided to anyone other than the member who requested the replacement ballot. Candidates are specifically prohibited from handling electronic or replacement ballots, whether voted or unvoted, sealed or unsealed, other than their own. Voted ballots must be received by the Elections Officer on or before Election Day. Any voted electronic ballot sent electronically on or before Election Day and received by the Elections Officer on or before 5:00 p.m. on the Election Day shall be counted.

**4.12 Ballot Designation:** There shall be no ballot designations on the ballot.

- 4.13 Qualification of Voters:** For mailed ballots, The Elections Officer shall confirm the name on the outer ballot envelope with the "List of Eligible Voters." For electronic voting, the Elections Officer shall confirm the name of the electronic ballot recipient with the "List of Eligible Voters." SamCERA's General Members are qualified to elect the Second and Third Trustees. SamCERA's Safety members are qualified to elect the Seventh Trustee. SamCERA's Retired Members are qualified to elect the Eighth Trustee and Eighth Trustee Alternate. To be eligible to vote, a member shall be a part of his or her respective group at the close of the pay period immediately preceding the first day that ballots may be mailed or sent electronically per these regulations bylaws.
- 4.14 Counting of Ballots:** The Elections Officer shall supervise the counting of ballots. A candidate certified as the winner must receive the highest number of votes cast. In the event of a tie vote, the Elections Officer shall determine the winning candidate by lot.
- 4.15 Voided Ballots:** The Elections Officer shall void all of the following ballots: duplicate ballot cast; all ballots which bear the signature or initials of the voter on the ballot itself; ballots which do not bear the signature of the voter on the outside of the envelope or where it is not possible to determine who submitted the ballot; envelopes containing more than one ballot; and ballots where the Election Officer cannot determine the voter's intent. Any names written in on a ballot, other than the name of a qualified candidate, will not be counted or reported in the Certification of the Election Results.
- 4.16 Alternate Safety Member:** If there are two or more safety member candidates for the seventh member position, the candidate receiving the highest number of votes shall be elected to the seventh member position. The safety member candidate who is of a different safety membership group and who received the next highest number of votes, shall be elected to the Alternate Safety Member per Government Code section 31520.1. If there is no eligible candidate who is of a different safety membership group there will not be an Alternative Safety Member.
- 4.17 Certification of Election Results:** The Elections Officer shall canvass and certify the results of the election no later than the Friday following the election.
- 4.18 Receipt & Safekeeping of Ballots Cast:** The Elections Officer shall accept and provide for the safekeeping of all ballots cast. Ballots must be retained for 180 days after Election Day, and, in the absence of litigation, may be discarded thereafter.
- 4.19 Recount:** Upon written application to the Elections Officer, and within five (5) calendar days of the Elections Officer's Certification of Election Results, any candidate may order a recount of all votes cast. Prior to a recount, the candidate requesting a recount must agree to pay for the actual cost of the recount. The Elections Officer shall determine an estimated cost for a recount and the candidate requesting the recount must deposit with the Elections Officer payment for the estimated cost. The candidate will be under no obligation to pay for the recount if the recount shows a change

in the outcome of the election. The recount shall be conducted in the same manner as the original count.

**4.20 Contests:** Election results may be contested by a candidate upon filing a verified petition with the Superior Court of the County of San Mateo within 15 calendar days of the issuance of the Certified Election Results by the Elections Officer. Candidates may contest the election on the following grounds: a) that the person who has been declared elected to an office was not, at the time of the election, eligible for that office; b) that the candidate or his or her agent has given to a member a bribe or reward or offered any bribe or reward for the purpose of procuring his or her election; c) that a sufficient number of votes were illegal, fraudulent, forged, or otherwise improper, and that had those votes not been counted, the person having been declared elected would not have received more votes than the contestant; and/or d) that the Elections Officer in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election as to any person who has been elected. The acceptance or rejection of a candidate's statement of qualifications by the Elections Officer shall not constitute grounds for a new election. A hearing on the contest shall be set by the Court. The Court's decision shall be based upon clear and convincing proof of the allegations. If the Board orders a new election based upon the Court's decision, it shall be held in accordance with the provisions for Special Elections.

**4.21 Oath of Office:** Newly elected Trustees shall be sworn-in during the Board's first meeting in July.

**4.22 Special Elections:** The Chief Executive Officer shall advise the Board when a vacancy occurs and shall recommend a date for a Special Election to fill the vacancy. If the vacancy occurs within nine months of the end of the term of the seat that has been vacated, there shall be no Special Election. If the vacancy occurs more than nine months prior to the end of the term, the Board shall call a Special Election, which shall be held not less than 60 nor more than 120 days from the effective date of the vacancy. Special Elections shall be conducted in conformance with the provisions of this Article for Regular Elections, except that the schedule shall be adjusted by the Elections Officer to comply with the date of the Special Election set by the Board.

**4.23 Reimbursement for Services:** The SamCERA Board of Retirement will reimburse the Elections Officer for the election services provided.

**4.24 Public Information:** During the ninety days preceding Election Day, no newsletter or other one-time publication intended for the use of SamCERA's members will be distributed by SamCERA which includes the name of any incumbent candidate for an election conducted pursuant to these regulations. This moratorium shall not apply to standard publications such as member booklets, annual reports and other documents of a similar nature.

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**ARTICLE V.**  
**MEMBERSHIP DUTIES & RIGHTS**

**5.1 Membership:** An individual entering permanent full time or permanent part time employment with a SamCERA employer, which shall be either the County of San Mateo, the Superior Court of the County of San Mateo, or the Mosquito and Vector Control District, prior to July 1, 1996, shall become a member of SamCERA on the first day of the first pay period commencing after the date of employment. An individual entering such employment on or after July 1, 1996, shall become a member of SamCERA on the first day of employment. Members may delay the effective start date of their membership with SamCERA up to twelve weeks after the date of employment and/or terminate accrual of service credit with SamCERA up to twelve weeks prior to termination of employment with a SamCERA employer, for the purpose of establishing reciprocity with another public retirement system as described in the 1937 Act.

**5.2 Exclusions:** All employees whose service falls in the following categories shall be excluded from membership in SamCERA:

- A. Members of appointed Boards and Commissions;
- B. Judges of the Superior Court;
- C. Employees with temporary, seasonal, or intermittent tenure, including but not limited to employees hired for a fixed term or terms which shall not in the aggregate exceed 6,240 hours; and extra help employees. However, employees first hired on or before September 30, 2014, to temporarily fill an existing position that is already filled by another employee shall be included in membership.

**5.3 Entering Service Application:** Upon entering service, the member shall immediately execute and file statement in the manner and form prescribed by the Chief Executive Officer.

**5.4 Terminating Employment:** A member terminating employment shall file either a completed application for retirement, or a completed form directing disposition of retirement contributions, in the manner and form prescribed by the Chief Executive Officer.

**5.5 Required Documents for Retirement:** Prior to the effective date of retirement, in addition to the fully executed and completed application for retirement, each member shall provide to the retirement system the following documents:

- A. Proof of birth of the member filed in one of the following manners: copy of a birth certificate or passport.

- B. Fully executed option agreement in the manner and form prescribed by the Chief Executive Officer.
- C. Documentation setting forth arrangement for the auto deposit of benefit payments. The Board may approve payment by check in cases where the Board's paying agent is unable to provide payment by auto deposit and in cases where the member has specifically requested payment by check.
- D. For those members of SamCERA who were married or had a registered domestic partnership for all or a portion of their SamCERA service time: (i) copies of all applicable marriage licenses or registered domestic partnerships; (ii) for any subsequent divorce order or termination of registered domestic partnership, copies of Court dissolution orders setting forth the division of the SamCERA service time between the member and the non-member must be submitted. If applicable, a fully executed waiver by the non-member of community share of SamCERA-covered service in the manner and form approved by the Chief Executive Officer can be submitted; and (iii) if applicable, copies of death certificates for spouses and domestic partners.

**5.6 Approval of Service Retirement:** All applications for service retirement shall be subject to review and approval by the Board. The Chief Executive Officer shall place such retirements on the Consent Calendar for the Board's ratification of staff's actions.

**5.7 Effective Date of Retirement:** The effective date of retirement shall be the later of the day following the member's last day on the County payroll or the day the member filed the retirement application with the Chief Executive Officer.

**5.8 Service Credit:** For members in a contributory plan, credit shall be given for all County service rendered for compensation for which contributions are made by or for the member. For members in a noncontributory plan, credit shall be given for all County service rendered for compensation after the effective date of employment.

**5.9 Computation of Service Credit:** Service credit shall be calculated as follows: 2,080 hours of service shall equal one year of service credit.

**5.10 Statement of Retirement Allowance Time of Retirement.** Prior to the ratification by the Board of an application for service retirement, the member shall be furnished with a statement indicating the amount of his or her retirement allowance calculated in accordance with the unmodified and various optional modes of settlement. Such statement shall be in duplicate and provide a place for the signature of the member and the member's spouse or registered domestic partner, if any, indicating the choice as to the type of retirement allowance selected. The completed statement shall constitute the annuity certificate provided for in Government Code section 31526.

**5.11 Statement of Deferred Retirement.** When a member leaves the County service and applies for and is granted deferred retirement, such member shall be furnished with a statement indicating deferred retirement has been granted and setting forth the years of service credited to said member.

**5.12 Suspension of Benefits:** If the Chief Executive Officer is made aware of circumstances in which, in the opinion of the Chief Executive Officer, the member may not be receiving his or her benefit, the Chief Executive Officer may temporarily suspend the benefit payments in order to determine whether the benefit payment should be directed in a different manner.

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## ARTICLE VI. DISABILITY RETIREMENT

**6.1 Application Process:** The application process for service connected and non-service connected disabilities shall be as follows:

- A. Submission of Completed Application:** Either the member or the employer, on behalf of the member, can apply for a disability retirement by filing with SamCERA: (1) a completed SamCERA application for disability retirement form and (2) authorizations signed by the member permitting SamCERA and its legal counsel to obtain all medical information relating to the applicant's physical or mental illness or injury and permitting access to records relating to applicant's current and prior employment. Applicant's employer shall complete forms provided by SamCERA and provide information as deemed necessary. All information received by SamCERA or its agents and counsel shall be treated as confidential and not released to anyone except insofar as may be necessary for the administration of the retirement system or upon an order of a court of competent jurisdiction, as provided by Government Code section 31532.
- B. Determination of the Disability:** The determination of the member's disability shall be limited to the disability as set forth in the application for disability retirement.
- C. Additional Information:** If at any point in the process the Chief Executive Officer determines that additional information is necessary, the Chief Executive Officer may ask the applicant or the employer to submit the additional information.
- D. Medical and Investigatory Services:** The Chief Executive Officer is authorized and directed to secure such medical, investigatory and other services and advice in connection with applications for disability retirement as the Board may require in order to make its decision.
- E. Review of Information and Records by Medical Advisor:** SamCERA will inform the member when all information and records requested by SamCERA have been received. When the applicant indicates that all necessary information, including information not requested by SamCERA, has been submitted, the Chief Executive Officer shall forward the complete record to the Board's medical advisor for his or her evaluation of the applicant's condition.
- F. Cut off for Amendments to Application:** After the record has been forwarded to the Board's medical advisor, the member cannot amend his or her application to add a new disabling condition that is unrelated or not caused by the condition set forth in the application. The member must file a new application which would be subject to all regular statutory deadlines.



**6.2 Submission of Application Information to the Board:** Staff, in consultation with the medical advisor, shall prepare a memorandum summarizing the application and information received from medical, employment and other records. Staff shall make a recommendation to the Board regarding the approval of the application.

- A. Notification of Board Review:** The applicant shall be notified in writing when the matter will be submitted to the Board for its consideration and that the matter will be placed on the Board's consent agenda. If staff's recommendation to the Board is to deny the application, the notice shall include a copy of staff's memorandum to the Board summarizing the application and information received from medical, employment and other records. While the applicant is welcome to appear before the Board, the appearance is not mandatory, unless the member would like the matter removed from the consent agenda.
- B. Board Review of Staff Recommendation:** The matter will be placed on the Board's consent agenda with recommended action by staff. The applicant or any member of the Board can request that the matter be taken off of the consent agenda to be discussed and considered during the regular agenda. If the matter is placed on the regular agenda, it will be heard in closed session, unless otherwise directed by the applicant. For all disability matters heard on either the consent agenda or regular agenda, the Board shall review the information submitted and consider the acceptance of staff's recommendation. The applicant and the employer, shall be notified in writing of the Board's action regarding the application.
- C. Request for a Formal Hearing:** If the applicant or employer is dissatisfied with the Board's action, the applicant or employer may request a formal hearing. The request for formal hearing must be made in writing, and filed with the Chief Executive Officer, if by the member, within 60 days of the date of the notice of the Board's action; if by the employer, within 30 days of the date of notice of the Board's action. If no request for a formal hearing is filed within the applicable period, the Board's action shall be deemed final and binding.
- D. Formal Hearing Process:** Upon the filing of a written request for a hearing, staff will select a hearing officer on a rotational basis from a list of private attorneys who serve as hearing officers, and then will refer the matter to counsel for SamCERA. Counsel for SamCERA will contact the applicant about communicating with the hearing officer regarding the hearing schedule and the preparation of the record. The hearing officer shall schedule the time and place of the hearing with the consent of the parties. The hearing officer shall set a briefing schedule for any briefs to be filed. The hearing shall be limited to the disability as set forth in the application for disability retirement and shall be recorded by a qualified court reporter. The hearing officer shall prepare and submit a proposed finding of fact and recommended decision based upon the evidence considered.
- E. Objections to Hearing Officer Decision:** The proposed findings of fact and recommendations of the hearing officer shall be served on the parties who shall have 10 days from the date of

service to submit written objections. The objections shall be incorporated into the record to be considered by the Board.

- F. Notice of Submission of Hearing Officer Decision to the Board:** The hearing officer's decision shall be placed on the Board's agenda as soon as administratively possible after the period for objections has run. Staff shall notify the applicant of the time and place of the meeting and staff's recommendation to the Board. The matter will be placed on the Board's consent agenda with the recommended action by staff. The applicant or any member of the Board can request that the matter be taken off of the consent agenda to be considered during the regular agenda. If the matter is to be heard on the regular agenda, it will be heard in closed session, unless otherwise directed by the applicant.
- G. Consideration of Hearing Officer Decision by the Board:** Upon receiving the proposed findings of fact and recommendations of the hearing officer, the Board may: (1) approve and adopt the proposed findings and recommendations; or (2) require a transcript or summary of all the testimony and evidence, and then take such action as in its opinion is indicated by such evidence; or (3) refer the matter back with or without instructions to the hearing officer for further proceedings; or (4) set the matter for a hearing before itself. The applicant and the employer shall be notified in writing of the Board's action.
- H. Appeal of the Action of the Board:** If the member or the employer is dissatisfied with the Board's action relating to the hearing officer's recommended decision, the applicant or the employer may obtain judicial review by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure within 90 days of the date of the written notice of the Board's action. If a petition for writ of mandate is not timely filed, the Board's action shall be deemed final and binding.

**6.3 Effective Date:** If the Board approves the application for disability retirement, the effective date of retirement shall be the later of the day following the member's last day on payroll or the day the member filed the retirement application with the Chief Executive Officer.

**6.4 Required Documents for Disbursement of Disability Payment:** The first disability retirement benefit payment shall not be disbursed until the member has filed the required documents set forth in Article V regulation 5.5 of these regulations.

**6.5 Grounds for Termination of an Application for Disability Retirement:** An application for disability retirement may be terminated and considered null and void by the Board one year after the date of its filing for one or more of the following reasons:

- A.** Failure of the member to submit to a medical examination at the request of the Board; or

- B. Any failure to cooperate by the member or applicant or any other act or omission by the member or applicant or member or applicant's representative which prevents the Board from hearing and adjudicating the application for disability retirement within one year of its filing.

**6.6 Process to Terminate an Application for Disability Retirement:** Before the Board determines whether to void and null a disability application, the applicant shall be given at least 15 days written notice of the proposed action and the date and time of the Board meeting. The applicant shall be granted the opportunity to appear and address the Board regarding the proposed action. The Board may exercise broad discretion in extending the time for the processing of the application. Nothing in this section shall prohibit an applicant from filing a new application, if applicant is eligible to do so.

**6.7 Cancellation of Disability Benefits after Medical Examination:** If the Board requires a disability retiree under the age of 55 to undergo a medical examination and on the basis of such examination determines that it should review whether the disability retiree is still physically or mentally incapacitated for service in the position held when retired for disability, the matter will be placed on the Board's agenda for hearing. The disability retiree will be given written notice of the hearing and be advised that if the Board decides that he or she is no longer incapacitated, and if the employer reinstates the retiree, the disability retirement allowance will be canceled. The notice shall also advise the disability retiree of his or her right to be represented by counsel, to present evidence in his or her own behalf and to cross-examine any witness produced in support of canceling the disability retirement allowance. If the disability retiree is dissatisfied with the Board's action, the disability retiree may obtain judicial review by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure within 90 days of the date of the written notice of the Board's action. If a petition for writ of mandate is not timely filed, the Board's action shall be deemed final and binding.

**6.8 Modified Work Program Pending Determination of Disability:** If the Board has not made a determination of eligibility for a disability benefit prior to a member's entry into a Modified Work position designed by the County to accommodate the member's work restrictions, then at the time of the member's retirement, the Board's determination of eligibility for a disability benefit shall be based upon the normal and customary duties of the member's position prior to entering the Modified Work position, unless the member requests that the Board base its decision on the duties of a subsequent position held by the member.

**6.9 Modified Work Program-Request for Retirement:** If the Board has authorized modified work benefits, then upon the member's subsequent request to retire, the Chief Executive Officer may retire the member with a disability benefit and record the member's name on the consent agenda for Board ratification. However, if the Chief Executive Officer has reason to believe that the member's condition has improved to the point where the member may be capable of performing the normal and customary duties of the position from which the member was previously disabled,

then the Chief Executive Officer shall submit the matter to the Board for its independent review and determination.

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**ARTICLE VII.**  
**PURCHASE OF CREDIT FOR PUBLIC SERVICE**

**7.1 Compliance with State and Federal Law.** All service credit purchases and redeposits of previously withdrawn contributions are to be made in accordance with the Internal Revenue Code ("IRS Code"), the Treasury Regulations promulgated thereunder, and the County Employees' Retirement Law of 1937 ("Government Code"). If there is a conflict between federal and state law, federal law will govern in order to maintain SamCERA's tax qualified status.

**7.2 Permissive Service Credit and Applicable Federal Statutory Tax Limits:** Service Credit purchases may be limited by the applicable requirements set forth in IRS Code Section 415. IRS Code Section 415 tax limits do not apply to the redeposit of previously withdrawn contributions and related interest. Service Credit purchases must comply with the provisions of Government Code section 31482.5.

**7.3 Service Credit Available for Purchase by Active Members:**

- A. Prior Public Service:** Any active member who is a County employee or a member of a participating employer and was a member prior to January 1, 1970 may purchase service credit for service performed for military or federal, state, and other public agencies credited in California that do not qualify for reciprocity. Such public service may be purchased pursuant to the terms of Government Code sections 31641.1 & 31641.2.
- B. Employment Through CETA:** Any active member (1) who was employed by the County or a participating employer while compensated pursuant to the provisions of the Comprehensive Employment Training Act (CETA) and (2) who subsequently became a permanent employee of the County or District, is eligible to purchase credit for the Public Service performed for the County or District while a CETA participant. Applications for the purchase of such CETA public service must include a detailed documentation accounting the period of service and compensation in the form and manner prescribed by the Chief Executive Officer. Such public service may be purchased pursuant to the terms of Government Code section 31641.5.
- C. Service Credit.** In accordance with Government Code section 31641.5, a member may purchase service he or she rendered with San Mateo County or another employer participating in SamCERA prior to the member's membership in SamCERA during which time the member was ineligible for membership. A member must make this service purchase at the time they are employed with that participating employer.
- D. Leave of Absence Credit.** In accordance with Government Code section 31646, an eligible member may purchase his or her uncompensated leave of absence on account of illness, not

to exceed 12 consecutive months, provided the eligible member returned directly to active service following such uncompensated leave.

**E. Plan 3 Noncontributory Plan Credit.** Eligible members currently in a SamCERA contributory plan contained in Government Code section 31496, et seq. may upgrade their past service credit in the SamCERA noncontributory plan by paying the difference between the employer contributory and noncontributory plan contributions plus the member's contributions for the contributory plan for the period of service being upgraded along with the interest the contributions would have earned had they been on deposit with SamCERA. Contributions are based on the current entry age.

**F. Redeposit of Previously Withdrawn Contributions.**

1. An active member may redeposit to SamCERA an amount that is equal to all previously withdrawn contributions, plus interest, in accordance with Government Code section 31652. SamCERA will charge interest for the period from the date of separation from SamCERA until the member has paid the required redeposit amount.
  - a. A member's age for purposes of calculating contribution rates will be based on the member's age at the nearest birthday at the time of the member's reentrance into employment, unless the member is otherwise eligible under Government Code section 31652 to have his or her original entrance age reinstated.
  - b. SamCERA will treat a member who does not redeposit all contributions previously withdrawn plus interest as a new member without credit for any previous service.
  - c. If for any reason a member fails to complete the redeposit of previously withdrawn contributions plus interest, SamCERA will not reinstate the member's related prior service credit in accordance with Government Code section 31652. SamCERA will instead return the eligible member's related payment in a manner and at a time permitted under federal tax law.
  - d. SamCERA will credit the member's related service credit upon completion of full payment of all previously withdrawn contributions plus interest.
2. Prior to filing an application for retirement, an eligible former member may redeposit to SamCERA an amount that is equal to all previously withdrawn contributions, plus interest, in accordance with Government Code section 31652. The former member must qualify for this type of redeposit under the terms of

Government Code section 31831.3. Under the provisions SamCERA will charge interest for the period from the date of separation from SamCERA until the member has paid the required redeposit amount. Redeposits of this type may only be executed by lump sum payment.

- 3. Additional Retirement Credit (ARC):** Eligible active members in a contributory plan who completed at least 5 years of credited service with SamCERA were able to purchase up to 5 years of ARC in increments of one year if the active member submitted an application to purchase ARC prior to December 31, 2012. ARC cannot be used to meet the minimum eligibility requirements for either a service retirement, a non-service disability retirement, additional ad hoc cost-of-living benefits based on service credit, or eligibility for any other benefits based on service credit or toward a cancellation of contributions for certain members who attain 30 years of service credit. Service may include purchased extra-help time, upgraded Plan 3 service, and redeposited time. Reciprocal service is not included. Government Code section 31658.

- 4. Prior Military Service.** See Regulation 7.7 for purchase of prior military service.

**7.4 Payment Options:** Federal and State Law Limitations. Eligible members may purchase Permissive Service Credit or make a redeposit of previously withdrawn contributions plus required accumulated interest using the following payment methods or a combination thereof. Payments are subject to the rules and/or conditions set forth below and any applicable tax limits under IRS Code section 415. All purchase agreements containing installment payments will include interest calculated using the actuarially assumed rate of earnings in effect as of the date each agreement is signed.

- A. Lump Sum After-Tax Payments and Terminal Pay:** An eligible member may pay with a single lump sum payment of after-tax dollars. Terminal Pay (the cash out of accrued hours of compensation paid to a member by the member's employer after terminating employment) can be used for lump sum after-tax payments. Terminal pay must be received by SamCERA by a separate payment issued after termination and not as a part of the member's last pay check.
- B. Pre-Tax Rollover Contributions:** In accordance with the regulations contained in Article VIII, an eligible member may pay with a pre-tax rollover contribution to SamCERA from a qualified retirement plan, an individual retirement account or annuity, an annuity contract described in IRS Code section 403(b), or a governmental 457(b) plan.
- C. Plan-to-Plan Transfers:** In accordance with the regulations contained in Article VIII, an eligible member may pay with an in-service trustee-to-trustee transfer from a governmental eligible deferred compensation plan described in IRS Code section 457(b) or an annuity contract described in IRS Code section 403(b), provided the transfer plan or

annuity contract provides for such transfers. Such transfers are subject to the requirements of IRS Code section 457(e)(17) or 403(b)(13), as applicable.

- D. Payroll Deductions:** An eligible member may elect to pay installments by post tax payroll deduction.

**7.5 Time Limitations for Installment Payments:** The time period over which a member may make installment payments is subject to the following limitations:

- A. Prior Public Service:** For a purchase of service credit for prior public service under Government Code sections 31641.1 and 31641.2, installment payments may be made over a period of time not to exceed five years.
- B. Service Credit, Including Employment through CETA:** For a purchase of service credit for prior service under Government Code section 31641.5, installment payments may be made over a period of time that does not exceed the length of time for which the member has elected to receive service credit, as determined by SamCERA.
- C. Leave of Absence Credit:** For a purchase of service credit for an unpaid leave of absence under Government Code section 31646, installment payments may be made over a period of time that does not exceed the length of unpaid leave that the member has elected to purchase, as determined by SamCERA.
- D. Plan 3 Service Credit Upgrade:** For upgrades of Plan 3 service credit pursuant to Board of Supervisor's Resolution 64827, installment payments may be made over a period of time that does not exceed twice the length of service being upgraded.
- E. Redeposit of Previously Withdrawn Contributions:** For redeposits of previously withdrawn contributions under Government Code section 31652, installment payments may be made over a period of one year.
- F. Additional Retirement Credit:** For a purchase of ARC under Government Code section 31658, installment payments may be made over a period not to exceed 10 years.
- G. Completion of Purchase After Separation of Service:** If a member terminates, retires or goes into deferred retirement before the purchase has been completed, the purchase must be completed no later than the date specified in the purchase agreement or 120 days after the effective date of retirement, whichever date is earlier.

## **7.6 Procedures**



- A. **Administrative Procedures:** SamCERA will establish administrative procedures for processing service credit purchases and redeposits of previously withdrawn contributions and will determine the amounts required for service credit purchases and redeposits, including required interest.
- B. **Required Documentation:** All purchases and redeposits shall be set forth in a written SamCERA election form and agreement. Members shall provide any required documents and information associated with their purchase or redeposit in a manner and form acceptable to SamCERA.
- C. **Requirement To Complete Purchase:** Except as otherwise provided below, service credit will not be credited to a member's account until the entire purchase has been completed. If for any reason a member fails to complete his or her service credit purchase, credit will be given in accordance with the contract or applicable provisions of the Government Code. SamCERA or the employer may return the eligible member's related overpayment in a manner and at a time permitted under federal tax law.
- D. **Partial Service Credit:** SamCERA will allow partial service credit for purchases of prior public service credit under Government Code sections 31641.1 and 31641.2 even though the member has not completed payment of the entire period he or she has elected.

**7.7 Military Service:** Eligible active members can purchase prior military service in accordance with the provisions of Government Code section 31641.97.

- A. **Notice by January 1, 1995:** Eligible members who gave written notice by January 1, 1995 by filing with SamCERA a signed Purchase of Military Service Credit Application form as prescribed by the Chief Executive Officer.
- B. **Certification:** The Application must include verification of military service (DD214 or its equivalent) and an affidavit that the applicant is not eligible to receive credit for this service under any other retirement plan.
- C. **Calculation of Cost to the Member:** Government Code section 31641.97 requires that the full cost, including interest, of the employee and county liability for the additional credit under this section shall be determined by the Board of Retirement on actuarial advice, and shall be the actuarial equivalent of the difference between the retirement benefits the person will receive with and without the credit for military service.
- D. **Actuarial Assumptions:** The actuarial factors used shall be those used for the actuarial valuation of the Retirement Fund at the time of the calculation, except that the member shall select the age of retirement.

- E. **Method Used to Determine the Cost:** The cost shall be the Actuarial Equivalent of the Difference between the benefit the member will receive with and without the credit for military service.
- F. **Lump Sum Purchase:** Eligible persons may purchase credit for their Military service at any time prior to the effective date of their retirement by lump-sum payment of an amount equal to the full cost, including interest, of the employee and county liability for the additional credit within 180 days prior to receipt of the lump-sum payment.
- G. **Installment Purchase:** Eligible persons may purchase credit for their military service at any time prior to the effective date of their retirement by authorizing biweekly post-tax payroll deductions over a period not to exceed five years in equal payments which will accumulate the full cost, including interest, of the employee and county liability for the additional credit within 180 days prior to commencement of the deductions.
- H. **Purchase of Partial Credit:** Eligible persons may purchase less than the full credit for which they are eligible, so long as the payment, or payments, accumulate the full cost, including interest, of the employee and employer liability for the additional credit. Additional credit may be purchased at any time prior to the effective date of retirement, so long as the payment or payments are based on the full cost within 180 days prior to receipt of the lump-sum payment or commencement of biweekly payroll deductions.
- I. **Recording of Members' Assets & Crediting of Interest:** All funds deposited into the Retirement Fund pursuant to this regulation shall be recorded in individual Military Service Credit Reserve accounts established in the name of the member. Funds on deposit shall be credited on the same terms and at the same rate of interest as the county's accounts in the Retirement Fund, regardless of the subsequent status of the member. On the effective date of retirement, all principal and interest in the Reserve will be transferred to the member's regular account in the Retirement Fund.
- J. **Calculation of Benefit Payable at Time of Retirement:** When the member files an application for retirement there shall be a recalculation of the Military Service Benefit and Member Service Credit Reserve as set forth subsection (E), using the information then available and the assumptions in effect at the time of recalculation.
- K. **Surplus:** If the calculations performed pursuant to subsection (J) indicate that the principal and interest in the Military Service Credit Reserve exceeds the amount required, the surplus balance will be refunded to the member, at a time and in a manner that complies with applicable tax laws.
- L. **Deficiency:** If the calculations performed pursuant to subsection (J) indicate that the principal and interest in the Military Service Credit Reserve is not sufficient to fund the full

Military Service Benefit, the Chief Executive Officer shall allow the member to make one of the following two elections: (1) Lump Sum Purchase: The member may immediately purchase the unfunded military service credit and receive the full Military Service Benefit; or (2) Pro Rata Credit: The member may elect to not purchase the unfunded military service credit and receive a reduced Military Service Benefit.

- M. Payment of Military Service Benefit:** On the effective date of retirement, the years of military service for which payment-in-full has been received shall be added to the member's years of county service in the computation of the retirement allowance and will, thereafter, be an integral part of the base allowance for the purpose of calculating cost-of-living increases and survivor benefits.
- N. Disability:** The member who retires on account of disability may elect either (1) a refund of all principal and interest in the account maintained pursuant to subsection (I), or (2) an annuity based upon the years-of- military-service for which payment-in-full has been received. If the member elects an annuity, all principal and interest in the account on the effective date of the Disability Retirement shall be converted to an annuity which will be based on the Board's Actuarial Assumptions, including Disability Retirement Life Expectancy Factors, in effect at that time. Subject to applicable tax laws, the annuity shall be payable for life in equal monthly installments, plus annual cost-of-living adjustments equal to those granted to retirees in the member's Plan. An eligible surviving spouse or registered domestic partner shall receive the applicable survivor allowance. The Chief Executive Officer shall determine the amount of the annuity on the effective date of the Disability Retirement.
- O. Death Before Retirement:** If the member was not eligible to retire, all principal and interest in the account maintained pursuant to subsection (I) will go the member's beneficiary. If the member was eligible to retire, the surviving eligible spouse or registered domestic partner may elect to receive (1) a refund of all principal and interest in the account maintained pursuant to subsection (I), or (2) a monthly allowance which includes military service credit based on the provisions of subsections (J) and (L). The surviving eligible spouse or registered domestic partner may elect to receive any surplus, make a lump- sum payment for any deficiency, or accept pro-rata credit, as provided for in subsection (J).
- P. Death After Retirement With a Surviving Spouse or Registered Domestic Partner:** The Military Service Credit Reserve has been merged with the member's regular account. Therefore, the surviving eligible spouse or registered domestic partner will receive a monthly allowance based on the same survivor option formula elected by the member at the time of retirement.

- Q. Death After Retirement Without a Surviving Spouse or Registered Domestic Partner:** The Military Service Credit Reserve has been merged with the members' regular account and, therefore, the balance, if any, goes to the beneficiary.
- R. Termination of Employment:** Upon termination of employment, a member may elect to withdraw the funds; or, if eligible, may elect a deferred retirement, in which case the funds will remain on deposit and will continue to be subject to the provisions of subsection (I) until the effective date of retirement.
- S. Election to Discontinue Installment Purchase Plan:** The decision to purchase military service credit is irrevocable. However, unless otherwise prohibited by law, any member may discontinue the installment purchase plan at any time. All funds on deposit will continue to be subject to the provisions of subsection (I). Unless otherwise prohibited by law, the member may elect to reinstate the purchase plan at any time prior to the effective date of retirement, but shall be subject to re-computation of the balance due as calculated pursuant to subsections (C)(F)(G)(H). At the time of retirement, the member will receive proportional military service credit, as provided for in subsections (J) and (M).
- T. Dissolution of Marriage or Registered Domestic Partnership:** If the final decree does not specifically identify the member's Military Service Credit Reserve, the Chief Executive Officer shall administer the assets in the account in the same manner as stipulated in the final decree for the disposition of the member's retirement benefits.

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## **ARTICLE VIII.**

### **INTERNAL REVENUE COMPLIANCE**

- 8.1 Plan Year.** The plan year for purposes of these regulations is the calendar year.
- 8.2 Reversions of Employer Contributions.** Pursuant to section 401(a)(2) of the Internal Revenue Code, the SamCERA trust fund shall not revert, and no contributions shall be permitted to be returned, to a participating SamCERA employer prior to the satisfaction of all liabilities with respect to their employees and their beneficiaries under the trust.
- 8.3 Vesting.** Pursuant to section 401 (a)(7) of the Internal Revenue Code, a member shall be 100% vested in her or her service retirement benefit upon attaining eligibility for that service retirement benefit. A member shall be 100% vested in his or her accumulated contributions at all times. In the event of a full or partial termination of, or complete discontinuance of employer contributions to, SamCERA, the accrued benefits of the affected members shall be 100% vested and nonforfeitable to the extent funded and to the extent required by federal law.
- 8.4 Required Minimum Distributions.** The regulations herein reaffirm and clarify the existing practices of SamCERA 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. SamCERA 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. Capitalized terms used in this regulation 8.4 are defined in Section H. Terms used in this regulation 8.4 are defined in the County Employees’ Retirement Law of 1937 (“CERL”) or the California Public Employees’ Pension Reform Act of 2013 (“PEPRA”) apply here unless otherwise stated.
- A. 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).
- B. 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.

### **C. Time And Manner Of Distribution**

**1. 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.

#### **2. Forms of Distribution.**

**a. Periodic and Other Forms of Payments.** A Member's entire interest in SamCERA shall be distributed in the form of RMD Annuity payments that meet the requirements of paragraph (b) of this subsection or in the form of a single sum. 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).

**b. 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:

- i. Periodic.** RMD Annuities must be paid over equal payment intervals which may not be longer than one year.
- ii. 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 E or Section F of this regulation.
- iii. Increases.** RMD Annuities may not increase over time except in accordance with the rules in Section G (1).
- iv. Change in Period Paid.** The period over which an RMD Annuity is paid can be changed only in accordance section 1.401(a)(9)-6 of the Treasury regulations.
- v. Commencement.** Payment of the RMD Annuity must start no later than the Required Beginning Date.

**D. 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 F(1)(a) or F (1)(b).

**E. 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.

- 1. 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.
- 2. 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.
- 3. 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.
- 4. Joint and Survivor RMD Annuity When the Sole Beneficiary Is Not the Member's Spouse.**
  - a. 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. 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.

- b. Rule Regarding Children of Member.** Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6 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.
- c. 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 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 (b) of this subsection (4), 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.

## **5. Period Certain RMD Annuity**

- a. 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, 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.
- b. 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 contained in 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.

- c. Rule Regarding Children of Member.** Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6 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 E (4) above shall apply.
  - d. Rule Regarding Other Beneficiaries.** Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6 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.
- F. 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:
- 1. When Distributions Must Begin.**

    - a. 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 (e) of this subsection 1, 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.
    - b. 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 (e) of this subsection 1, distributions to the Designated Beneficiary must begin by December 31 of the calendar year immediately following the calendar year in which the Member died.
    - c. 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.

**d. 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 F (1), other than Section F (1)(a) applies as if the surviving Spouse were the Member.

**e. Election of Five Year Rule.** A Designated Beneficiary may elect, at the time and in the manner determined by SamCERA, to have the five year rule of Section F (1)(c) 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.

**2. When Distributions Are Considered to Begin.** For purposes of this Section F, unless Section F (1)(d) applies, distributions are considered to begin on the Member's Required Beginning Date. If Section F (1)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section F (1)(a). 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 F(1)(a), the date distributions are considered to begin is the date distributions actually commence.

**3. Length of Distribution Period.**

**a. Member Is Survived by a Designated Beneficiary.**

- i. General Rule.** If the Member is survived by a Designated Beneficiary, the Member's entire interest in SamCERA shall be distributed over the life of the Designated Beneficiary or over a period certain that does not exceed the period specified in 3(a)(ii).
- ii. Period Certain.** The period certain in 3(a)(i) may not exceed the Designated Beneficiary's life expectancy determined using the Single Life Table in Treasury regulations section 1.401(a)(9)-9. 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.

- b. 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 if it can be distributed, must be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.
- c. 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 F(3) 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 F(1)(a).

## **G. Special Rules**

- 1. RMD Annuity Payment Increases.** RMD Annuity payments will either not increase over time or increase only as follows:

- a. Cost of Living Adjustments**

- i. 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 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.
- ii. 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.
- iii. Additional COLA Increases.** Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, 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 SamCERA, in accordance with the CERL, to represent an appropriate amount to take account of cost of living increases affecting retirees or beneficiaries.

- b. “Pop-Ups.”** 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.
  - c. 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 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 SamCERA as provided in the CERL.
  - d. 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.
  - e. Other Benefits.** Benefits may increase (i) to the extent increases are permitted in accordance with 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 section 31691.1 of the CERL; and (iii) pursuant to sections 31681.1 et seq., and 31739 et seq. of the CERL.
- 2. 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.
  - 3. Domestic Relations Orders.** Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, and taking into account the vested rights

in retirement benefits created by the California Constitution, pursuant to Article 8.4 of the CERL, both the Member and the Member's former Spouse shall be deemed to be separate Members of SamCERA for purposes of these regulations and section 401(a)(9) of the Code.

- 4. Reciprocal Member.** Under a good faith interpretation of the Code and Treasury regulations section 1.401(a)(9)-6, 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 SamCERA has reciprocity under California law, then for purposes of determining the Required Beginning Date under SamCERA the Member shall be treated as a current employee of a SamCERA employer and as such, as if he or she had not retired, even if he or she has attained age 70½.
- 5. 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, and taking into account the vested rights in retirement benefits created by the California Constitution, additional retirement benefits, if any, that are applicable under CERL and have been made applicable to SamCERA, to the surviving Spouse of a public safety SamCERA 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.
- 6. 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.
- 7. 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, 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 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 section 1.401(a)(9)-6 of the Treasury regulations, or upon the occurrence of such other event specified in 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.

#### **H. Definitions.**

1. **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.
2. **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 SamCERA 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 SamCERA. 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 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.
3. **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 preceding 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 F (1) of this regulation.
4. **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.
5. **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.
6. **Spouse.** A person who is a legally married spouse under either state law or federal law.

**8.5 Rollovers.** The regulations set forth herein reaffirm and clarify the existing practices of SamCERA with respect to rollovers into and out of SamCERA 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. SamCERA 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 used in this regulation 8.6 are defined in the County Employees' Retirement Law of 1937 ("CERL") or the California Public Employees' Pension Reform Act of 2013 ("PEPRA") apply here unless otherwise stated.

## **A. Rollover Distributions From SamCERA**

### **1. Rollovers**

- a. Direct Rollover.** A "Direct Rollover" is that portion of an Eligible Rollover Distribution that SamCERA 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.
- b. Indirect Rollover.** An "Indirect Rollover" is that portion of an Eligible Rollover Distribution that SamCERA pays directly to an Eligible Individual.

### **2. Eligible Individuals**

- a. Eligible Individual.** Only an "Eligible Individual" may elect a Direct Rollover. An "Eligible Individual" is:
  - i. Terminated From Employment.** A Member who has terminated employment from a SamCERA employer and who is eligible to withdraw his or her accumulated Member contributions under SamCERA;
  - ii. Surviving Spouse.** A deceased Member's surviving Spouse;
  - iii. Alternate Payee.** 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
  - iv. 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 non-spouse beneficiary provisions in Section A(7).

- b. Spouse.** A person who is a legally married under either state or federal law.

### **3. Payments that Can and Cannot be Rolled Over**

- a. Eligible Rollover Distribution Required.** SamCERA will pay a Direct Rollover on behalf of an Eligible Individual only if the payment is an "Eligible Rollover Distribution."
- b. 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 SamCERA. These amounts may include (a) refunds of Member contributions plus accumulated interest, or (b) one-time lump sum death benefit payments.
- c. 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.
- d. Exclusions from Eligible Rollover Distributions.** An Eligible Rollover Distribution does not include the following kinds of payments:
  - i. 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
  - ii. Required Distributions.** Payments that are "required minimum distributions" under Code section 401(a)(9).

### **4. Eligible Retirement Plans**

- a. Payment to Eligible Retirement Plan.** SamCERA will pay an Eligible Rollover Distribution directly to an "Eligible Retirement Plan."



**b. Eligible Retirement Plan Defined.** An “Eligible Retirement Plan” is:

- i. An annuity plan described in Code section 403(a);
- ii. An annuity contract described in Code section 403(b);
- iii. A governmental eligible deferred compensation plan described in Code section 457(b) that agrees to separately account for amounts transferred into such plan from SamCERA;
- iv. An individual retirement annuity described in Code section 408(a);
- v. An individual retirement account described in Code section 408(b);
- vi. A Roth IRA described in Code section 408A; or
- vii. 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).

**c. 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.

## **5. Direct Rollovers**

**a. Withholding and Direct Rollovers.** SamCERA will not withhold any federal or state income taxes from a Direct Rollover. The only exception is that SamCERA 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 SamCERA.

**b. Administrative Requirements, In General.** An Eligible Individual who requests a Direct Rollover must complete a distribution form in the manner and form that SamCERA prescribes. SamCERA 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.

**c. Rollover Check.** The Eligible Individual must provide SamCERA 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,

SamCERA will provide this rollover check directly to the Eligible Individual who will be responsible for delivering the check to the recipient IRA or plan.

- d. 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 SamCERA 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.
- e. Time of Payment.** SamCERA 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.

## **6. Indirect Rollovers**

- a. Choice of Indirect Rollover.** An Eligible Individual, other than a nonspouse beneficiary, may also choose to receive a rollover payment as an Indirect Rollover.
- b. Indirect Rollover Withholding.** An Indirect Rollover is subject to 20% federal income tax withholding, or the current applicable withholding rate, and any applicable state withholding. SamCERA will withhold and deduct these taxes on behalf of the Eligible Individual as prescribed by federal and applicable state law.
- c. 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.

## **7. Direct Rollover of a Non-Spousal Distribution.**

- a. 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.
- b. 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.

- c. **Trust as Beneficiary.** If the non-spouse beneficiary is a trust, SamCERA 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.

## 8. Notice Requirements

- a. **402(f) Notice from SamCERA.** SamCERA will provide the tax notice required under Code Section 402(f) to each Eligible Individual who requests a withdrawal from the SamCERA.
- b. **Time Periods.** SamCERA will not process any withdrawals 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 SamCERA, SamCERA may process the withdrawal before the 30-day period expires.

- B. **Rollover Contributions to SamCERA.** Adoption of these 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 SamCERA in the future and the right to make rollover contributions to SamCERA may be amended or terminated at any time and for any reason. If SamCERA has determined to permit any rollover contributions, SamCERA will permit Eligible Members to make a rollover contribution to SamCERA subject to the limitations and conditions described in this Section B.

## 1. General Rules

- a. **Eligible Member.** An "Eligible Member" is (i) an active Member of the SamCERA, or (ii) a SamCERA Member that has elected a deferred retirement.

- b. Rollovers Allowed.** SamCERA will permit an Eligible Member to make a rollover contribution to SamCERA for (i) a purchase of service credit, or (ii) a redeposit of previously withdrawn funds plus accumulated interest.
- c. Separate Accounting.** SamCERA will separately account for all rollover contributions.
- d. Certification to SamCERA by Member.** Only eligible rollover distributions as defined by Code Section 402(c)(4) can be contributed to SamCERA. In addition to any requirements under subsections 2, 3, and 4 below, each Eligible Member making a rollover contribution to SamCERA must certify in writing the source of the rollover funds and that the rollover contribution is an eligible rollover distribution under the Code. SamCERA will not accept rollovers of any after-tax contributions, amounts attributable to designated Roth contributions, amounts that represent minimum required distributions, or any rollover that is an indirect rollover that does not satisfy the requirements of Section 8.5 (B)(5).
- e. Elections and SamCERA 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 SamCERA. SamCERA has final discretionary authority to determine whether any required information or documentation is satisfactory and whether SamCERA will accept an Eligible Member's rollover contribution.
- f. Correction of Errors.** If SamCERA accepts a rollover contribution that it later determines was not eligible to be rolled over to SamCERA, SamCERA will return, as soon as administratively possible, the amount of the rollover contribution plus accumulated interest back to the sending institution and if not able to do so will distribute to the Eligible Member.

## **2. Rollovers from Qualified Plans**

- a. Acceptance of Rollover.** SamCERA may accept a rollover from another plan that is qualified under Code Section 401(a) and exempt from tax under Code Section 501(a).
- b. Required Due Diligence Process.** SamCERA will take reasonable steps to verify that the payment source (on the incoming check or wire transfer) is the former tax-qualified plan of the Eligible Member as represented by the

Eligible Member on his or her request to make a rollover. SamCERA will also take reasonable steps to verify that the rollover will be from a tax-qualified plan which can include the following or any other methods allowed in guidance issued by the Internal Revenue Service.

- i. SamCERA may confirm the qualified plan status of the transferring plan with information contained on the Department of Labor's database.
  - ii. If the qualified plan is not on the Department of Labor's database, then the Eligible Member must provide one of the following to SamCERA 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).
- c. **Additional Information Required.** The Eligible Member must provide a signed certification from the transferring plan's administrator that the rollover contribution contains no after-tax or designated Roth contributions or earnings or any amounts representing a required minimum distribution under Code section 401(a)(9). If that cannot be obtained, the Eligible Member must submit a statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution contains no after-tax or designated Roth contributions or earnings or any amounts representing a required minimum distribution. If an Eligible Member does not provide such information, SamCERA will not accept the rollover.

### 3. Rollovers from an IRA.

- a. **Acceptance of Rollover.** SamCERA may accept a rollover from an individual retirement account or annuity (IRA) described in Code Section 408(a) or Code Section 408(b).
- b. **Required Information from Member.** The Eligible Member must provide a statement signed by the Eligible Member under penalty of perjury certifying and identifying the IRA source of the rollover funds and that no portion of the rollover contribution contains after-tax or designated Roth contributions or earnings and that no portion of the rollover contribution contains a

required minimum distribution. If an Eligible Member does not provide such information, SamCERA will not accept the rollover.

- c. **Additional Information Required.** The Eligible Member must provide SamCERA 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 4089(a) or 408(b). As part of its due diligence process, SamCERA will take reasonable steps to verify the payment source (on the incoming rollover check or wire transfer) as the Eligible member's IRA, and if the Eligible Member was not able to obtain a letter from the transferring IRA custodian certifying the source of the funds, SamCERA may rely on its due diligence verification process to the extent it does not have any direct evidence to the contrary. If such qualified status cannot be confirmed, SamCERA will not accept the rollover.

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

- a. **Acceptance of Rollover.** SamCERA 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).
- b. **Required Due Diligence Process.** SamCERA will take reasonable steps to confirm the sending plan's status as an eligible 457(b) plan or an eligible Code section 403(b) annuity or custodial account and that the rollover contribution is valid. SamCERA will take steps to verify that the payment source (on the incoming check or wire transfer) is the former eligible 457(b) or 403(b) plan of the Eligible Member as represented by the Eligible Member on his or her request to make a rollover. SamCERA also will take reasonable steps to verify that the rollover will be from an eligible 457(b) plan or 403(b) plan which can include the following or any other methods allowed in guidance issued by the Internal Revenue Service.
  - i. SamCERA may confirm the qualified plan status of the transferring plan with information contained on the Department of Labor's database.
  - ii. If the qualified plan is not on the Department of Labor's database, then the Eligible Member must provide one of the following to SamCERA 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, SamCERA will not accept the rollover.

5. **Rollover Contributions Made by Indirect Rollover.** A rollover contribution to SamCERA 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 B (2)-(4), Eligible Members making a rollover contribution with an indirect rollover must provide evidence satisfactory to SamCERA that the Eligible Member received the distribution within the required 60-day period.

**8.6 Compensation Limit.** The regulations set forth herein reaffirm and clarify the existing practices of SamCERA 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. SamCERA 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 used in this regulation 8.6 are defined in the County Employees' Retirement Law of 1937 ("CERL") or the California Public Employees' Pension Reform Act of 2013 ("PEPRA") apply here unless otherwise stated.

#### **A. Limitation On Annual Compensation Earnable**

##### **1. In General**

- a. **Annual Compensation Earnable Limit.** The annual amount of compensation that is taken into account in determining all benefits provided by SamCERA to affected Members for any year, which is referred to in CERL and PEPRA and in these Regulations as "Compensation Earnable," shall in no event be greater than the amount allowed by Code section 401(a)(17) adjusted in

accordance with the Code for increases in the cost of living. This limit is called the Annual Compensation Earnable Limit in these regulations.

**b. Members Affected By the Annual Limit.**

- i. **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.
- ii. **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.

**(A.) Date First Becomes a Member.** An individual first becomes a Member on the date that a Member first became a Member in SamCERA, regardless of whether the Member terminated and resumed participation at a later date.

**(B.) Pensionable compensation limits for new members hired on or after January 1, 2013.** If a "new member" as defined in PEPRA hired on or after January 1, 2013, is placed by SamCERA into a "PEPRA" plan, such member's pensionable compensation shall be limited by the applicable dollar amount set forth in the Annual Compensation Earnable Limit.

**2. Operational Rules, In General.** This section applies to members who are not grandfathered under section 1 (b)(i).

- a. **Limited Compensation Earnable.** All Compensation Earnable that would be taken into account for determining benefits provided by SamCERA 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.
- b. **Benefits Affected by the Limit.** The Annual Compensation Earnable Limit applies to the determination of all benefits provided by SamCERA 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.



- c. **Compensation Earnable from More Than One Employer.** If Compensation Earnable from more than one employer that participates in SamCERA 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. The Annual Compensation Earnable Limit does not apply to the aggregate of Compensation Earnable earned from all employers that participate in SamCERA.
- d. **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.
- e. **Pensionable compensation limits for new members hired on or after January 1, 2013.** If a "new member" as defined under PEPRAs hired on or after January 1, 2013, and SamCERA places the member into "PEPRA" plan, such member's pensionable compensation shall be limited by the applicable dollar amount set forth in the Annual Compensation Earnable Limit.
- f. **Reciprocity and New Membership in SamCERA.** An individual who becomes a member of SamCERA on or after July 1, 1996, and who has reciprocity with another public sector retirement plan nevertheless is a new Member of SamCERA. Membership before July 1, 1996 in another retirement plan with which SamCERA has reciprocity does not create pre-July 1, 1996 SamCERA membership for purposes of the Annual Compensation Earnable Limit.
- g. **Reciprocity and Prior Membership in SamCERA.** A person who was a grandfathered member of SamCERA prior to July 1, 1996 under section 1 (b)(i) who terminated employment with an employer that participated in SamCERA, remains a member of SamCERA prior to July 1, 1996. Therefore, if the Member established reciprocity between another public sector retirement plan and SamCERA, any higher Compensation Earnable that is earned under the other plan shall be taken into account by SamCERA in accordance with the rules of reciprocity and that Compensation Earnable shall not be limited by the Annual Compensation Earnable Limit.
- h. **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.

- i. **Clarification Concerning Member Contributions.** Because Member contributions are the basis for benefits provided by SamCERA, Member contributions shall not be made by taking into account Compensation Earnable in excess of the Annual Compensation Earnable Limit.
- j. **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.

## **B. Plan Year And Cost-of-Living Adjustments**

- 1. **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.
- 2. **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 SamCERA are based.
- 3. **Plan Year Compensation Earnable.**
  - a. **General Rule.** Since SamCERA'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.
  - b. **Member Contributions.** Since SamCERA'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.

**8.7 Limits on Annual Benefits.** The regulations set forth herein reaffirm and clarify the existing practices of SamCERA 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. SamCERA 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 F. Terms used in this regulation 8.7 are defined in the County Employees’ Retirement Law of 1937 (“CERL”) and the California Public Employees’ Pension Reform Act of 2013 (“PEPRA”) apply here unless otherwise stated.

**A. Annual Benefit Limit.**

**1. Annual Benefit Limit, In General**

- a. Annual Limit.** Unless the alternative limit described in subsection 5 of this Section applies, the Annual Benefit payable to a Member under SamCERA at any time shall not exceed the dollar limit specified under section 415(b)(1)(A) of the Code, automatically adjusted under section 415(d) of the Code, effective January 1 of each year, as provided by the Internal Revenue Service.
- b. Maximum Payment.** If the benefit the Member would otherwise be paid in a Limitation Year would be in excess of the limit in (1)(a), the benefit shall be limited to a benefit that does not exceed the limit.
- c. 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 section 415(d) of the Code.
- d. Multiple Annuity Starting Dates.**
  - i.** 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.

- ii. 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.

**e. Actuarial Adjustment for Forms of Benefit.** Except as provided in paragraph (f) of this Section A (1), 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 (i) or (ii) below, whichever is applicable.

- i. **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 the greater of (a) the Straight Life Annuity (if any) payable to the Member under SamCERA commencing at the same annuity starting date as the form of benefit payable 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 the Applicable Mortality Table and a 5% Interest rate.
- ii. **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 equal to the greatest of : (a) 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 the interest rate and the mortality table specified in the Plan for adjusting benefits in the same form; (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 5.5 percent interest rate and the Applicable Mortality Table; or (c) 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 the Applicable Interest Rate and the Applicable Mortality Table divided by 1.05.

**f. 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:

- i. 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.
- ii. 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.
- iii. Certain Automatic Benefit Increases.** Benefits that meet the following requirements: (a) SamCERA 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 (b) 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 A (2)(a) of this regulation.

**g. Rules for Determining Annual Benefit.**

- i. **Social Security Supplements, Etc.** The determination of the Annual Benefit shall take into account social security supplements described in section 411(a)(9) of the Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant section 1.411(d)-4, of the Treasury regulations.
- ii. **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.
- iii. **Rollovers.** The amount of any benefits attributable to member contributions and to rollover contributions shall be determined in accordance with Code section 415.
- iv. **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.

## 2. Reduction for Less Than 10 Years of Participation

- a. **Reduction.** If the Member has less than 10 Years of Participation in SamCERA, 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 SamCERA, and (ii) the denominator of which is 10.
- b. **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 SamCERA 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 SamCERA 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.

- c. **Disability and Death Benefits.** The reduction described in paragraph (a) of this subsection shall not apply to disability benefits or death benefits as provided in the Code.

### **3. Reduction for Commencement Before Age 62 for Certain Members**

- a. **No Reduction for Employees of the Sheriff's Department.** The reduction shall not apply if the Member's benefit is based on at least 15 years as a full-time employee of the Sheriff's Department pursuant to Code section 415(b)(2)(H). However, there shall be a reduction adjustment as set forth in paragraph (b) of this subsection if the Member's benefit is based on years of service as an employee of the Probation Department.
- b. **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:
  - i. The Annual Benefit Limit reduced in accordance with Code section 415(b) to its actuarial equivalent using: the Applicable Mortality Table and a 5% interest rate; or
  - ii. The Annual Benefit Limit multiplied by the ratio of the immediately commencing Straight Life Annuity under SamCERA at the Member's Annuity Starting Date to the annual amount of the Straight Life Annuity under SamCERA commencing at age 62, both determined without applying the limitations of this regulation.
- c. **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.
- d. **Death and Disability.** The adjustment described in paragraph (b) of this subsection shall not apply to disability benefits or death benefits.

### **4. Increase for Commencement After Age 65.**

- a. 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:
- i.** The Annual Benefit Limit increased in accordance with Code section 415(b) to its actuarial equivalent using: The Applicable Mortality Table and a 5% interest rate; or
  - ii.** The Annual Benefit Limit multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under SamCERA at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under SamCERA at age 65, both determined without applying the limitations of this regulation. For this purpose, the adjusted immediately commencing Straight Life Annuity under SamCERA 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 SamCERA at age 65 is the annual amount of such annuity that would be payable under SamCERA to a hypothetical Member who is age 65 and has the same accrued benefit as the Member.
- b. 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.

**5. Minimum Benefit Permitted.** The benefit otherwise accrued or payable to a Member under SamCERA is treated as not exceeding the Annual Benefit Limit if:

- a. 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 SamCERA 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, and (ii) the denominator of which is 10; and



- b. Condition.** The Member has never participated in any qualified defined contribution plan maintained by the Member's Employer.

## **B. Participation In Multiple Defined Benefit Plans**

- 1. 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 SamCERA Employer, the sum of the participant's Annual Benefits from all such plans may not exceed the Annual Benefit Limit.
- 2. Multiple Plan Benefit Limit Coordination.** Where the Member's SamCERA 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 SamCERA only to the extent that the reduction under such other plans is insufficient to avoid exceeding the limit.

- C. Multiple Employer Plan.** Benefits attributable to the Member attributable to all of the Employers participating in SamCERA are taken into account for purposes of applying the Annual Benefit Limit.

## **D. Grandfather Rules.**

- 1. 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 SamCERA determined without regard to any amendment made after October 14, 1987.
- 2. Qualified Participant.** For purposes of this section, the term "Qualified Member" means a Member who first became a Member in SamCERA before January 1, 1990.
- 3. Election.** Pursuant to California Government Code section 31899 et seq., the election has been made to have this Section apply.

## **E. Purchase of Permissive Service Credit**

- 1. General Rule.** If a Member makes one or more contributions to SamCERA to purchase Permissive Service Credit under SamCERA, then the requirements of this regulation will be treated as met only if:

- a. 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
- b. The requirements of SamCERA's regulation governing the limits on annual additions applicable to defined contribution plans are met by treating all such contributions as annual additions.

**2. Permissive Service Credit Defined.** For purposes of this Section, "Permissive Service Credit" means:

- a. Credit recognized by SamCERA for purposes of calculating a member's benefit under SamCERA; and
- b. Credit which such member has not received under SamCERA; and
- c. Credit which the member may receive only by making a voluntary additional contribution in an amount determined under SamCERA, which does not exceed the amount necessary to fund the benefit attributable to the service credit purchased; and
- d. Credit which the member is authorized to purchase under Article VII of these regulations.

**3. Limitation on Nonqualified Service Credit.** SamCERA 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 SamCERA.

**4. Nonqualified Service Credit.** For purposes of subsection 3, 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 6 of this Section);

- b. Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (a) or (d) 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 SamCERA of employees who are described in subparagraph (a) or (d) of this paragraph; or
- d. Military service (other than qualified military service under Code section 414(u)) recognized by SamCERA.

In the case of service described in subparagraphs (a), (b), and (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.

Even if the proposed service credit purchase meets the above requirements, to the extent such proposed service credit purchase is not permitted under Article VII of these regulations, or is prohibited by CERL or PEPR, SamCERA will not process such service credit purchase.

- 5. Trustee-to-Trustee Transfers.** In the case of a trustee-to-trustee transfer to SamCERA 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 subsection 3 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 SamCERA shall apply to such amounts and any benefits attributable to such amounts.

- 6. Redeposits.** In the case of any repayment of contributions (including interest) to SamCERA with respect to an amount previously refunded upon a forfeiture of service credit under SamCERA or similar repayment of contributions to another governmental plan maintained by a state or local government employer within the State of California, any such repayment shall not be taken into account for purposes of this regulation.

## **F. Definitions.**

- 1. Annual Benefit.** “Annual Benefit” means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided in Section A(1)(e), 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 A(1)(g), 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.
- 2. Annual Benefit Limit.** “Annual Benefit Limit” means the limit described in Section A(1)(a) of this regulation.
- 3. Annuity.** “Annuity” for purposes of this regulation does not mean “annuity” as defined in the County Employees Retirement Law but instead means a retirement benefit that is payable by SamCERA, as provided in section 415 of the Code.
- 4. 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 SamCERA.
- 5. Applicable Interest Rate.** “Applicable Interest Rate” means the “applicable interest rate” defined in section 417(e)(3)(C) of the Code.
- 6. Applicable Mortality Table.** “Applicable Mortality Table” means the “applicable mortality table” defined in section 417(e)(3)(B) of the Code.
- 7. Employer.** “Employer” means an employer who participates in SamCERA. Solely to the extent provided in the Code and applicable guidance from the Internal Revenue Service with respect to public agencies the term “Employer” will also include all “Affiliated Employer” which means the entities within the controlled group of the Employer.
- 8. Limitation Year.** “Limitation Year” means the calendar year.
- 9. 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.
- 10. Spouse.** A person who is a legally married spouse under either state law or federal law.

**8.8 Defined Contribution Limits.** The regulations set forth herein reaffirm and clarify the existing practices of SamCERA with respect to the limits on annual additions under section 415(c) of the Internal Revenue Code (the “Code”). These regulations may be applicable in certain cases when Members make service credit purchases. 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. SamCERA 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 B. Terms used in this regulation 8.8 are defined in the County Employees Retirement Law of 1937 (“CERL”) or the California Public Employees’ Pension Reform Act of 2013 (“PEPRA”) apply here unless otherwise stated.

**A. Annual Additions Limitation.** Notwithstanding anything to the contrary contained in SamCERA, the total Annual Additions allocated to a Member’s Account under SamCERA, when added to the Annual Additions allocated to the Member’s accounts under all other Aggregated Plans maintained by the Employer for any Limitation Year, shall not exceed the Maximum Permissible Amount; provided, however, that the limit described in B (7)(b) shall not apply to an individual medical benefit account (as defined in section 415(l) of the Code).

**B. Definitions.** Solely for purposes of this regulation 8.8, the following definitions shall apply:

- 1. Account.** “Account” means the separate Member account provided under SamCERA for benefits that are separate and apart from the retirement benefits (annuity and pension) otherwise provided under the County Employees Retirement Law.
- 2. Aggregated Plan.** “Aggregated Plan” means any defined contribution plan which is aggregated with SamCERA pursuant to Section C of this regulation.
- 3. 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:
  - a.** 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;
  - b.** 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).

- c.** Forfeitures;
- d.** 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, except that such amounts are not included in Annual Additions for purposes of applying the 100% of compensation limit.

**4.** The term "Annual Additions" excludes:

- a.** 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;
- b.** Catch-up contributions made in accordance with Code section 414(v);
- c.** Restorative payment described in Treasury regulations section 1.415(c) 1(b)(2)(ii)(C);
- d.** Excess deferrals that are distributed in accordance with Treasury regulations section 1.402(g)-1(e)(2) or (3);
- e.** 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);
- f.** Employee contributions to a qualified cost-of-living arrangement described in Code section 415(k)(2)(B);
- g.** Employee contributions picked up by the Employer under Code section 414(h)(2);
- h.** 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
- i.** 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).

5. **Employer.** “Employer” means an employer who participates in SamCERA. Solely to the extent provided in the Code and applicable guidance from the Internal Revenue Service, with respect to public agencies, the term "Employer" will also include “Affiliated Employer” which means all entities within the controlled group of the Employer.
6. **Limitation Year.** “Limitation Year” means the calendar year.
7. **Maximum Permissible Amount.** “Maximum Permissible Amount” means the lesser of:
  - a. The amount allowable under section 415(c) of the Code as adjusted for increases in the cost-of-living under section 415(d) of the Code; or
  - b. 100 percent of the Member’s Total Compensation for the Limitation Year.
8. **Severance from Employment.** “Severance from Employment” means the Member ceases to be an employee of the Employer. A Member does not have a Severance from Employment if, in connection with a change of employment, the Member’s new employer maintains SamCERA with respect to the Member.
9. **Total Compensation.** “Total Compensation” for purposes of this regulation only, means all items of remuneration described in paragraph (a) and excludes all items of remuneration described in paragraph (b), below.
  - a. **Items Included.** Total Compensation includes all of the following items of remuneration for services:
    - i. A Member’s wages as defined within the meaning of Code 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 Code Sections 6041(d), 6051(a)(3) and 6052 (including amounts that 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)) and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of employment or the services performed.

- ii. 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;
- iii. Amounts paid or reimbursed by the Employer 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;
- iv. The amount includible in the gross income of an Member upon making the election described in Code section 83(b);
- v. 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
- vi. 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.

**b. Items Excluded.** The following items are excluded from Total Compensation:

- i. 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;
- ii. 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);

- iii. Other items of remuneration that are similar to any of the items listed in (i) and (ii), above.

**c. Timing.**

- i. 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).
- ii. 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 Year 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.
- iii. 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:
  - (A.) 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

- (B.)** 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.

- d. 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.

- C. 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 shall be aggregated with SamCERA, and all plans so aggregated shall be considered as one plan in applying the limitations of this regulation 8.8.

- D. 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 SamCERA shall be reduced to the extent necessary to avoid exceeding the limitations of this regulation when contributions are aggregated as described in C. above.

- E. Correction.** Any excess Annual Additions shall be corrected using the methods specified in Revenue Procedure 2013-12 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.

- 8.9 Actuarial Equivalent.** For determining benefits provided by SamCERA, actuarial equivalents shall be established by the Board as being a benefit of equal value when computed upon the basis of mortality tables and interest assumptions adopted by the Board from time to time upon the recommendation of SamCERA's actuary as reflected in SamCERA's actuarial valuation.

**8.10 Normal Retirement Ages.** The normal retirement ages set forth below shall be in effect until such time as action taken by the Legislature, Congress, Internal Revenue Service or other government agencies whose actions take precedence as a matter of law over the actions of SamCERA establish or require establishment of normal retirement ages that differ from those established in this regulation. The Board may change the normal retirement age 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. These normal retirement ages are based upon SamCERA's calculation of the average actual retirement ages of members and was reviewed by SamCERA's actuary.

**A. General Members.** The normal retirement age for general members shall be the later of age 60 or the age at which the member is entitled to receive a monthly retirement allowance under the County Employees Retirement Law of 1937 contained in Government Code sections 31450 et seq. Normal retirement age is not later than age 70.

**B. Safety Members.** The normal retirement age for safety members shall be the later of age 53 or the age at which the member is entitled to receive a monthly retirement allowance under the County Employees Retirement Law of 1937 contained in Government Code sections 31450 et seq. Normal retirement age is not later than age 70.

**8.11 Post Retirement Employment**

**A. No Pre Arrangement of Post-Retirement Employment.** A member who retires at an age younger than normal retirement age, as defined in section 8.10, may not, prior to the date the member's retirement commences, enter into an agreement, either oral or written, to be reemployed while retired by the County or any other employer whose employees are members of SamCERA, regardless of the length of the member's break in service after retirement.

**B. Required Break in Service Prior to Post Retirement Employment.** Regardless of a member's age, every member who is reemployed by a SamCERA employer consistent with the terms of Government Code section 7522.56, or any amendments thereto, shall have a 180-day break in service from the date of retirement to the commencement of the reemployment. If a member is reemployed within the 180 days, pursuant to Government Code section 7522.56, and the member retired at an age younger than normal retirement age, as defined in section 8.10, there must be at least a continuous 90-day break in service from the date of the member's retirement prior to such reemployment unless such reemployment is to respond to an emergency declared by a government agency or an emergency that may prevent the stoppage of public business. Said breaks in service set

forth above shall constitute a “bona fide” separation from service to the extent required by Section 401(a) of Title 26 of the United States Code.

**8.12 Prohibited Transactions.** Effective as of July 1, 1989, SamCERA may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code. Prohibited transactions include, but are not limited to the following transactions with certain related parties, such as participating employers: 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.

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