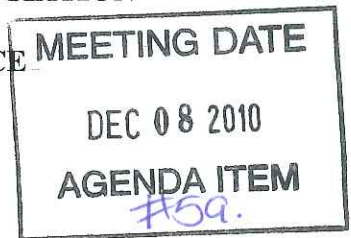


**CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT
POLICY ON INTERNAL REVENUE CODE COMPLIANCE**

Adopted: _____



1. Purpose of this Policy

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

2. Definitions

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

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

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

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

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

5. Required Minimum Distributions (IRC Section 401(a)(9); CERL §§ 31485.14, 31706)

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

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

6. Limitation on Compensation (IRC Section 401(a)(17); CERL §31671;BOR Regulations VI., Board Compensation Policy)

- A. Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with IRC Section 401(a)(17)(B)) may not be taken into account in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.
- B. As used in this section, the term "eligible member" means a person who first became a member of CCCERA prior to the plan year beginning after December 31, 1995 (January 1, 1996). Pursuant to section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, eligible members are not subject to the limits of IRC Section 401(a)(17). The limits referenced in subsection (A) above applies only to years beginning after December 31, 1995, and only to individuals who first become plan members in plan years beginning on and after January 1, 1996.

7. Eligible Rollover Distributions (IRC Section 401(a)(31); CERL §31485.15)

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

- A. "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under IRC Section 401(a)(9); and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in IRC Section 408(a) or (b) or to a qualified defined contribution plan described in IRC

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

- B. "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
- (i) an individual retirement account ("IRA") described in IRC Section 408(a),
 - (ii) an individual retirement annuity ("IRA") described in IRC Section 408(b),
 - (iii) an annuity plan ("annuity contract") described in IRC Section 403(a),
 - (iv) a qualified trust (such as CCCERA) described in IRC Section 401(a),
 - (v) effective January 1, 2002, an annuity contract ("403(b) plan") described in IRC Section 403(b),
 - (vi) effective January 1, 2002, a plan eligible under IRC Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from CCCERA, or
 - (vii) effective January 1, 2008, a Roth IRA described in IRC Section 408A.
- C. "Distributee" means an active member or former active member. It also includes the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC Section 414(p). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by IRC Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
- D. "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

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

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

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

Effective December 12, 1994, notwithstanding any other provision of CERL, the Board Regulations or this Policy, contributions, benefits and service credit with respect to qualified military service are governed by IRC Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

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

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

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

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

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

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

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

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

**CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT
POLICY ON 415 COMPLIANCE**

Adopted: _____

MEETING DATE

DEC 08 2010

AGENDA ITEM

#5b

1. Purpose of this Policy

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

2. Definitions

- A. All references to the Internal Revenue Code or IRC mean the Internal Revenue Code of 1986, as amended.
- B. The plan year is the calendar year.
- C. For 415 testing purposes, the limitation year is the calendar year.

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

- A. As provided in CERL Chapter 3.9, §31899 et seq., benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of IRC Section 415 for a qualified pension plan. Notwithstanding any other law, the limitation with respect to a person who first became a member under the plan prior to January 1, 1990 shall not be less than the accrued benefit of the member under the plan (determined without regard to any amendment of this plan adopted after October 14, 1987).
- B. *Basic 415(b) Limitation.*
 - (i) On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC Section 415(b)(1)(A), subject to the applicable adjustments in IRC Section 415(b) and subject to any additional limits that may be specified in CERL and this Policy, and subject to the grandfather provisions of CERL §31899.2. In no event shall such member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC Section 415(d) and the regulations thereunder.

(ii) For purposes of IRC Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to IRC Section 415(n)) and to rollover contributions (as defined in IRC Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

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

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

(i) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the IRC Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation § 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(ii) For a benefit paid in a form to which IRC Section 417(e)(3) does not apply (*i.e.*, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

(a) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

(b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and, for plan years after December 31, 2008, the applicable mortality tables described in IRC Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service ("IRS") guidance implementing IRC Section 417(e)(3)(B)); or

(iii) For a benefit paid in a form to which IRC Section 417(e)(3) applies (*i.e.*, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

(a) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(b) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular

form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and, for plan years after December 31, 2008, the applicable mortality tables described in IRC Section 417(e)(3)(B) (Notice 2008-85 or any subsequent IRS guidance implementing IRC Section 417(e)(3)(B)); or

(c) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation § 1.417(e)-1(d)(3) (the 30-year Treasury rate, using the rate in effect for the month prior to retirement) and, for plan years after December 31, 2008, the applicable mortality tables described in IRC Section 417(e)(3)(B) (Notice 2008-85 or any subsequent IRS guidance implementing IRC Section 417(e)(3)(B)), divided by 1.05.

(iv) In lieu of converting the optional form of benefit into a single-life annuity, the actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above subsections (ii) and (iii).

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

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

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

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

- (i) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of IRC Section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age 62.
- (ii) In the event the member's benefit is based on at least 15 years of service as a full-time employee of any police (sheriff's) or fire department or on 15 years of military service, the adjustments provided for in (i) above shall not apply. This provision applies to any employee of the police or fire department, regardless of

whether that person otherwise qualifies as a public safety officer, but does not apply to Safety Members who are not employed by a police or fire department.

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

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

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

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

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

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

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

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

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

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

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

(i) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(ii) For purposes of applying IRC Section 415(c) and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation § 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under IRC Section 414(h) shall not be treated as compensation.

(iii) This section applies solely for purposes of IRC Section 415 testing. Compensation will be defined as wages within the meaning of IRC Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under IRC Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC Section 3401(a)(2)).

(a) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of IRC Section 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(I) the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(II) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

(III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

(iv) Any payments not described in paragraph (iii)(b) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of IRC Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(v) An employee who is in qualified military service (within the meaning of IRC Section 414(u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(vi) Back pay, within the meaning of Treasury Regulation § 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(vii) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this section shall not exceed the annual limit under IRC Section 401(a)(17).

K. *Service Purchases under Section 415(n).*

(i) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC Section 415(n) will be treated as met only if:

(a) the requirements of IRC Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC Section 415(b), or

- (b) the requirements of IRC Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of IRC Section 415(c).

For purposes of applying this section, the plan will not fail to meet the reduced limit under IRC Section 415(b)(2)(C) solely by reason of this subparagraph and will not fail to meet the percentage limitation under IRC Section 415(c)(1)(B) solely by reason of this section.

- (ii) For purposes of this subsection the term "permissive service credit" means service credit—

- (a) recognized by the plan for purposes of calculating a member's benefit under the plan,
- (b) which such member has not received under the plan, and
- (c) which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (b), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

- (iii) The plan will fail to meet the requirements of this section if—

- (a) more than 5 years of nonqualified service credit are taken into account for purposes of this subparagraph, or
- (b) any nonqualified service credit is taken into account under this paragraph before the member has at least 5 years of participation under the plan.

- (iv) For purposes of subparagraph (iii), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to—

- (a) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in IRC Section 415(k)(3)),
- (b) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (a)) of an education organization described in IRC Section 170(b)(1)(A)(ii) which is a public,

private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(c) service as an employee of an association of employees who are described in clause (a), or

(d) military service (other than qualified military service under IRC Section 414(u)) recognized by the plan.

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

(v) In the case of a trustee-to-trustee transfer after December 31, 2001, to which IRC Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

(a) the limitations of subparagraph (iii) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(b) the distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(vi) For an eligible member, the IRC Section 415(c)(1) limitation shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the plan before January 1, 1998.

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

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

(i) If the law requires a lump sum payment for the purchase of service credit, CCCERA may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC Section 415(c) or 415(n).

(ii) If payment pursuant to subparagraph (i) will not avoid a contribution in excess of the limits imposed by IRC Section 415(c) or 415(n), CCCERA may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

M. *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by CCCERA shall not be taken into account for purposes of IRC Section 415, in accordance with applicable Treasury Regulations.

N. *Participation in Other Qualified Plans: Aggregation of Limits.*

(i) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in IRC Section 414(j) maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(ii) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in IRC Section 414(i) maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

O. *Reduction of Benefits Priority.*

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