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Chairman of the Board

Subject: INTERNAL REVENUE CODE §415 – ANNUAL LIMITS

INTERNAL REVENUE CODE §415 – ANNUAL LIMITS

INTERNAL REVENUE CODE SECTION 415 PART A. LIMITS ON ANNUAL BENEFITS (§415(b))

SECTION I. PURPOSE AND SCOPE

In accordance with California Government Code section 31899 et. seq., the rules set forth in this Policy are effective as of August 6, 2015, and reaffirm and clarify the existing practices of the San Bernardino County Employees Retirement Association ("SBCERA") with respect to the limits on benefits under section 415(b) of the Internal Revenue Code (the "Code"). For this Policy, the Code includes United States Department of the Treasury (Treasury) regulations issued under section 415(b). To the extent there is a conflict between this Policy and the Code, the Code governs.

SBCERA 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 Part are defined in Section VII. Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. ANNUAL BENEFIT LIMIT

A. Annual Benefit Limit, In General

1. Annual Limit

Unless the alternative limit described in subsection E of this Section applies, the Annual Benefit payable to a Member under SBCERA at any time shall not exceed the dollar limit specified under section 415(b)(1)(A) of the Code), automatically adjusted under §415(d) of the Code, effective January 1 of each year, as provided by the Internal Revenue Service.

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2. Maximum Payment

If the benefit the Member would otherwise be paid in a Limitation Year would be in excess of the limit in subsection A.1, the benefit shall be limited to a benefit that does not exceed the limit.

3. 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 § 415(d) of the Code.

4. Multiple Annuity Starting Dates

a. 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 this Policy as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates.

b. 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.

5. Actuarial Adjustment For Forms Of Benefit

Except as provided in paragraph 6 of this Section II.A, 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 Policy, the actuarially equivalent Straight Life Annuity shall be determined in accordance with paragraph (a) or (b) below, whichever is applicable.

a. 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 equal to the greater of:

i. The Straight Life Annuity (if any) payable to the Member under SBCERA commencing at the same Annuity Starting Date as the form of benefit payable to the Member, or

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- ii. 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. The Applicable Mortality Table; and
 - B. A 5% interest assumption.
- b. 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 is equal to the greatest of:
 - i. 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;
 - ii. 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
 - iii. 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.

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:

- a. 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

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(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.

- b. 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.
- c. Certain automatic benefit increases. Benefits that meet the following requirements: (i) SBCERA 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 SBCERA's Board of Retirement or the County of San Bernardino's Board of Supervisors) and (ii) 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 II.A.5 of this Policy.

7. Rules for Determining Annual Benefit.

- a. Social Security Supplements, Etc. The determination of the Annual Benefit shall take into account social security supplements described in § 411(a)(9) of the Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c), of the Treasury regulations.
- b. 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

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pickups under Code section 414(h)(2) or such as Member contributions that are actually paid by the Member's Employer.

- c. Rollovers. The amount of any benefits attributable to Member contributions and to rollover contributions shall be determined in accordance with Code section 415.
- d. 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 Policy but are subject to the limits of Code section 415(c) concerning defined contribution plans.

B. Reduction for Less Than 10 Years of Participation

1. Reduction

If the Member has less than 10 Years of Participation in SBCERA, 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 SBCERA, and (ii) the denominator of which is 10.

2. 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 SBCERA 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 SBCERA 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. A Member who is permanently and totally disabled within the meaning of § 415(c)(3)(C)(i) of the Code for an accrual computation period shall receive a Year of Participation with respect to that period. In no event shall more than one Year of Participation be credited for any 12-month period. For example, if under SBCERA, a Member receives 1/10 of a year of benefit accrual service for an accrual computation period for each 200 hours of service, and the Member is credited with 1,043.5 hours of service for the period (based on SBCERA's policy of regarding a full year's service as 2087 hours), the Member is credited with 1/2 year of participation for purposes of this subsection.

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3. Disability and Death Benefits

The reduction described in paragraph 1 of this subsection shall not apply to disability benefits or death benefits as provided in the Code.

C. Reduction for Commencement Before Age 62 For Certain Members

1. No Reduction For Certain Safety Members

The adjustment described in this subsection shall not apply if the Member's benefit is based on at least 15 years as a full-time employee of any police or fire department of an Employer that maintains SBCERA or as a member of the armed forces of the United States. Such police or fire department must be organized to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such Employer.

2. 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:

- a. The Annual Benefit Limit reduced in accordance with Code section 415(b) to its actuarial equivalent using:
 - i. The Applicable Mortality Table; and
 - ii. A 5% interest rate; or
- b. The Annual Benefit Limit multiplied by the ratio of the immediately commencing Straight Life Annuity under SBCERA at the Member's Annuity Starting Date to the annual amount of the Straight Life Annuity under SBCERA commencing at age 62, both determined without applying the limitations of this Policy.

3. 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.

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4. Death and Disability

The adjustment described in paragraph 1 of this subsection shall not apply to disability benefits or death benefits.

D. **Increase for Commencement After Age 65**

1. Increase For Benefits Commencing After Age 65

If the Member's benefits commence after the Member attains age 65, the Annual Benefit Limit is equal to the lesser of:

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

2. 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.

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E. Minimum Benefit Permitted

The benefit otherwise accrued or payable to a Member under SBCERA is treated as not exceeding the Annual Benefit Limit if:

1. 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 SBCERA 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 or an Affiliated Employer, and (ii) the denominator of which is 10; and

2. Condition

The Member has never participated in any qualified defined contribution plan maintained by the Member's Employer or an Affiliated Employer.

SECTION III. PARTICIPATION IN MULTIPLE DEFINED BENEFIT PLANS

A. 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 Employer, the sum of the participant's Annual Benefits from all such plans may not exceed the Annual Benefit Limit.

B. Multiple Plan Benefit Limit Coordination

Where the Member's 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 SBCERA only to the extent that the reduction under such other plans is insufficient to avoid exceeding the limit.

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SECTION IV. MULTIPLE-EMPLOYER PLAN

Employer-provided benefits for the Member attributable to all of the Employers participating in SBCERA are taken into account for purposes of applying the Annual Benefit Limit.

SECTION V. GRANDFATHER RULES

A. 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 SBCERA determined without regard to any amendment made after October 14, 1987.

B. Qualified Member

For purposes of this section, the term "Qualified Member" means a Member who first became a Member in SBCERA before January 1, 1990.

C. Election

By the enactment of Section 54899 et. seq. of the California Government Code, the "grandfather" election under Code section 415(b)(10) was made for SBCERA and all retirement systems maintained under the CERL.

SECTION VI. PURCHASE OF PERMISSIVE SERVICE CREDIT

A. General Rule

To the extent a Member is not prohibited by the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), if a Member makes one or more contributions to SBCERA to purchase Permissive Service Credit under SBCERA, then the requirements of this Policy will be treated as met only if:

1. The requirements of this Policy are met, determined by treating the accrued benefit derived from all such contributions as an Annual Benefit for purposes of this Policy; or
2. The requirements of SBCERA's Policy governing the limits on annual additions applicable to defined contribution plans are met by treating all such contributions as annual additions.

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B. Permissive Service Credit

1. Permissive Service Credit Defined

For purposes of this Section, "Permissive Service Credit" means credit:

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

Permissive Service Credit also includes service credit for periods for which there is no performance of service and, notwithstanding subparagraph b of this paragraph, may include service credited in order to provide an increased benefit for service credit which a Member is receiving under SBCERA, but only to the extent not prohibited by PEPRA.

2. Limitation on Nonqualified Service Credit

SBCERA will fail to satisfy the requirements of this Policy 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 SBCERA.

3. Nonqualified Service Credit

For purposes of paragraph 2 of this subsection, 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, a State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit

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which was obtained as a result of repayment described in subsection C of this Section);

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

In the case of service described in subparagraphs a, b or 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 any proposed service credit purchase meets the above requirements, to the extent such proposed service credit purchase is prohibited under the terms of PEPRA, SBCERA will not process such service credit purchase.

4. Trustee-to-Trustee Transfers

In the case of a trustee-to-trustee transfer to the Association 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 paragraph 2 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 SBCERA shall apply to such amounts and any benefits attributable to such amounts.

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C. Repayment of Cashouts

In the case of any repayment of contributions (including interest) to SBCERA with respect to an amount previously refunded upon a forfeiture of service credit under SBCERA or under 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 Policy.

SECTION VII. DEFINITIONS

A. Annual Benefit

"Annual Benefit" means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided in Section II.A.5, 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 Policy) pursuant to Section II.A.7 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.

B. Annual Benefit Limit

"Annual Benefit Limit" means the limit described in Section II.A.1 of this Policy.

C. Annuity

"Annuity" for purposes of this Part does not mean "annuity" as defined in the CERL but instead means a retirement benefit that is payable by SBCERA, as provided in section 415 of the Code.

D. 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 SBCERA.

E. Applicable Interest Rate

"Applicable Interest Rate" means the "applicable interest rate" defined in section 417(e)(3)(C) of the Code and shall be such rate of interest determined as of the first month preceding the stability period, which shall be the month containing the

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Annuity Starting Date for the distribution and for which the Applicable Interest Rate shall remain constant.

F. **Applicable Mortality Table**

"Applicable Mortality Table" means the "applicable mortality table" defined in section 417(e)(3)(B) of the Code.

G. **Employer**

"Employer" means the participating County or other governmental employer that participates or has participated in SBCERA and employs or employed the Member. The term "Employer" also includes any Affiliated Employer. Solely to the extent provided in the Code with respect to public agencies, the term "Affiliated Employer" means all members of a controlled group of an Employer.

H. **Limitation Year**

"Limitation Year" means the calendar year.

I. **Spouse**

Effective June 26, 2013, consistent with Federal tax rules, the term "Spouse" means a person who is lawfully married under California law, including marriages recognized under California Family Code section 308 that were entered into in another jurisdiction (another state, the District of Columbia, a United States territory or a foreign jurisdiction) which also include marriages of same-sex individuals that were validly entered into in another jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a jurisdiction that does not recognize the validity of same-sex marriage. In accordance with Federal tax rules, the term "Spouse" does not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under the law of another jurisdiction that is not denominated as a marriage under the laws of that state (whether opposite-sex or same-sex relationships).

J. **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.

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INTERNAL REVENUE CODE SECTION 415 PART B. DEFINED CONTRIBUTION LIMITS (§415(c))

SECTION I. PURPOSE AND SCOPE

In accordance with California Government Code section 31899 et. seq., the rules set forth in this Policy are effective as of August 6, 2015, and reaffirm and clarify the existing practices of the San Bernardino County Employees' Retirement Association ("SBCERA") with respect to the limits on annual additions under Internal Revenue Code section 415(c) (the "Code"). For this Policy, the Code includes United States Department of the Treasury (Treasury) regulations issued under section 415(c). To the extent there is a conflict between this Policy and the Code, the Code governs.

SBCERA 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 Part are defined in Section III. Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

SECTION II. ANNUAL ADDITIONS LIMITATION

A. Annual Additions Limit In General

Notwithstanding anything to the contrary contained in the Association, the total Annual Additions allocated to a Member's Account under the Association, when added to the Annual Additions allocated to the Member's accounts under all other Aggregated Plans maintained by the Employer or an Affiliate for any Limitation Year, shall not exceed the Maximum Permissible Amount; provided, however, that the limit described in III.G.2 shall not apply to an individual medical benefit account (as defined in section 415(l) of the Code).

SECTION III. DEFINITIONS

Solely for purposes of this Policy, the following definitions shall apply:

A. Account

"Account" means the separate Member account provided under SBCERA for benefits that are separate and apart from the retirement benefits (Annuity and pension) otherwise provided under the CERL.

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B. Affiliate

Solely to the extent provided in the Code with respect to public agencies, the term "Affiliate" means all members of a controlled group of an Employer.

C. Aggregated Plan

"Aggregated Plan" means any defined contribution plan which is aggregated with SBCERA pursuant to Section III of this Policy.

D. Annual Additions

"Annual Additions" means the sum of the following amounts credited to a Member's Account under SBCERA and any Aggregated Plans for the Limitation Year:

1. Employer contributions allocated to the Member's Account that is separate and apart from any pension or Annuity benefits provided under the CERL;
2. 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)), to the extent such service credit purchase is not prohibited under PEPRA and those amounts are treated as Annual Additions in the year contributed pursuant to Code section 415(n)(1).
3. Forfeitures;
4. 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 or Affiliate, except that such amounts are not included in Annual Additions for purposes of applying the 100% of compensation limit.

The term "Annual Additions" excludes:

1. 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;
2. Catch-up contributions made in accordance with Code section 414(v);

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3. Restorative payment described in Treasury regulations section 1.415(c)-1(b)(2)(ii)(C);
4. Excess deferrals that are distributed in accordance with Treasury regulations section 1.402(g)-1(e)(2) or (3);
5. 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);
6. Loan repayments;
7. Employee contributions to a qualified cost-of-living arrangement described in Code section 415(k)(2)(B);
8. Employee contributions picked up by the Employer under Code section 414(h)(2);
9. Make-up contributions attributable to a period of qualified military service, as defined in Code section 414(n), with respect to the year in which the contribution is made (but not with respect to the year to which the contribution relates); and
10. Employee contributions to purchase permissive service credit (as defined in Code section 415(n)(4)) to the extent such service credit purchase is allowed under PERA and the accrued benefit derived from all such contributions is treated as an annual benefit subject to the limits of Code section 415(b).

E. Employer

"Employer" means the participating County or other governmental employer that participates or has participated in SBCERA and employs or employed the Member.

F. Limitation Year

"Limitation Year" means the calendar year.

G. Maximum Permissible Amount

"Maximum Permissible Amount" means the lesser of:

1. \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code; or

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2. 100 percent of the Member's Total Compensation for the Limitation Year.

H. 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 SBCERA with respect to the Member.

I. Total Compensation

"Total Compensation" means all items of remuneration described in paragraph (1) and excludes all items of remuneration described in paragraph (2), below.

1. Items Included

Total Compensation includes all of the following items of remuneration for services:

- a. A Member's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer and any Affiliate to the extent that the amounts are includible in gross income (or to the extent that amounts would have been includible in gross income but for an election under Code sections 125(a), 132(f)(4), 402(e)(3), 402(m)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements, or other expense allowances under a non-accountable plan, as described in Treasury regulations section 1.62-2(c);
- b. 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;
- c. Amounts paid or reimbursed by the Employer or an Affiliate 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;
- d. The amount includible in the gross income of an Member upon making the election described in Code section 83(b);

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- e. 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
- f. 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.
- g. Differential wage payments as defined in Internal Revenue Code section 3401(h)(2).

2. Items Excluded

The following items are excluded from Total Compensation:

- a. Employer contributions (other than elective contributions described in Code sections 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;
- b. Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are excludable from the gross income of the Member, and are not salary reduction amounts that are described in Code section 125);
- c. Other items of remuneration that are similar to any of the items listed in a and b, above.

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3. Timing

- a. 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 sections 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b)).
- b. 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.
- c. 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:
 - i. 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
 - ii. 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

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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.

4. 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.

SECTION IV. 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 or an Affiliate shall be aggregated with the Association, and all plans so aggregated shall be considered as one plan in applying the limitations of this Policy.

SECTION V. 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 SBCERA shall be reduced to the extent necessary to avoid exceeding the limitations of this Policy when contributions are aggregated as described above.

SECTION VI. CORRECTION

Any excess Annual Additions shall be corrected using the methods specified in guidance promulgated by the United States Secretary of the Treasury describing the procedures for correcting excess Annual Additions under the Employee Plans Compliance Resolution System ("EPCRS") or its successor.