



## Board Administration Policy

# Annual Additions Limit - IRC 415(c)

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### I. Purpose

- A. This policy reaffirms and clarifies the existing practices of the Association with respect to annual additions limits under Internal Revenue Code section 415(c) and Treasury regulations issued thereunder.

### II. Definitions

A. **Solely for purposes of this policy, the following definitions shall apply:**

1. Account: "Account" means the separate Member account provided under the Association for benefits that are separate and apart from the retirement benefits (annuity and pension) otherwise provided under the County Employees Retirement Law.
2. 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.
3. Aggregated Plan: "Aggregated Plan" means any defined contribution plan which is aggregated with the Association pursuant to IV of this policy
4. Annual Additions: "Annual Additions" means the sum of the amounts described in subsection a. credited to a Member's Account under the Association and any Aggregated Plans for the Limitation Year; and excludes the amounts described in subsection b. below:
  - a. The term "Annual Additions" includes:
    - i. Employer contributions allocated to the Member's Account that is separate and apart from any pension or annuity benefits provided under the CERL or PEPRA;
    - ii. Employee contributions (after-tax), including mandatory contributions (as defined in Code section 411(c)(2)(C) 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 the CERL or PEPRA, if those amounts are treated as Annual Additions in the year contributed pursuant to Code section 415(n)(1).
    - iii. Forfeitures;
    - iv. Amounts allocated to the Member's individual medical account (within the meaning of Code section 415(l)(2), 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.

- b. The term “Annual Additions” excludes:
- i. Redeposits of withdrawals as described in Code section 415(k)(3) (for example, to purchase restoration of an accrued benefit that was lost when accumulated member contributions were previously withdrawn) for the limitation year(s) in which the redeposit occurs;
  - ii. Catch-up contributions made in accordance with Code section 414(v);
  - iii. Restorative payment described in Treasury regulations section 1.415(c)-1(b)(2)(ii)(C);
  - iv. Excess deferrals that are distributed in accordance with Treasury regulations section 1.402(g)-1(e)(2) or (3);
  - v. Rollover contributions (as described in Code sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d) and 457(e)(16));
  - vi. Loan repayments;
  - vii. Employee contributions to a qualified cost-of-living arrangement described in Code section 415(k)(2)(B);
  - viii. 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);
  - ix. Employee contributions to purchase permissive service credit (as defined in Code section 415(n)(3)) to the extent such service credit purchase is allowed under the CERL and PEPRA and the accrued benefit derived from all such contributions is treated as an annual benefit subject to the limits of Code section 415(b); and
  - x. Contributions that are picked up by an Employer under Code section 414(h)(2).
5. Employer: “Employer” means the governmental entity that participates in the Association in accordance with the CERL and employs the Member.
6. Limitation Year: “Limitation Year” means the calendar year.
7. Maximum Permissible Amount: “Maximum Permissible Amount” means the lesser of:
- a. IRC Annual Limit, as adjusted for increases in the cost-of-living under Code section 415(d); 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 the Association with respect to the Member.

9. Total Compensation: "Total Compensation" means all items of remuneration described in subsection "a" and excludes all items of remuneration described in subsection "b", below.

a. Items Included: Total Compensation includes all of the following items of remuneration for services:

- i. 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 includable in gross income (or to the extent that amounts would have been includable 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)). 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);
- ii. Amounts described in Code section 104(a)(3), 105(a), or 105(h), but only to the extent that these amounts are includable in the gross income of the Member;
- iii. 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;
- iv. The amount includable in the gross income of a Member upon making the election described in Code section 83(b);
- v. Amounts that are includable 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.
- vii. Differential wage payments as defined in Internal Revenue Code section 3401(h)(2).

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 includable 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 includable 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 excludable 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 paragraphs "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, includable 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)). The Association provides that Total Compensation for a Limitation Year includes amounts earned during the Limitation Year but not paid during the Limitation Year solely because of the timing of pay periods and pay dates if: (1) these amounts are paid during the first few weeks of the next Limitation Year; (2) the amounts are included on a uniform and consistent basis with respect to all similarly situated employees; and (3) no compensation is included in more than one Limitation Year.
- 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. The Association provides that the following amounts are includable in Total Compensation if paid by the later of 2½ months after severance from employment or the end of the Limitation Year if the amounts would have been included in Total Compensation if paid prior to Severance from Employment: (1) accrued bona fide sick, vacation or other leave is included in Total Compensation if the Member would have been able to use the leave had employment continued, and (2) payment pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includable in gross income.

- 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:
  - 1. 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
  - 2. 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.

### **III. Annual Additions Limitation, In General**

- A. 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 Section II.A.7.b shall not apply to an individual medical benefit account (as defined in Code section

415(l)).

**IV. Aggregation with Other Defined Contribution Plans**

- A. All defined contribution plans (as defined in Treasury regulations section 1.415(c)-1(a)(2) 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.

**V. Coordination with Other Defined Contribution Plans**

- A. 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 the Association shall be reduced to the extent necessary to avoid exceeding the limitations of this policy when contributions are aggregated as described above.

**VI. Correction**

- A. Any excess Annual Additions shall be corrected using the methods specified in 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.

**VII. Code and Regulations Prevail**

- A. This policy is intended to be in accordance with the Internal Revenue Code (Code) and the applicable Treasury regulations. To the extent there is a conflict between this policy and the Code and Treasury regulations, the applicable law will govern.

**VIII. Policy Review**

- A. Staff shall review this Policy at least once every three years to ensure that it remains relevant, appropriate, and in compliance. Any revisions or amendments to this policy must be approved by the Board of Retirement in accordance with the bylaws.

**IX. History**

01/01/2015	Effective Date of Bylaw Section 27
12/08/2017	Extracted from Bylaws
06/29/2018	Staff reviewed, no content changes; updated format and resulting section cross-references
04/12/2019	Policy Review section amended to at least once every three years
07/09/2021	Minor edits/updates by tax counsel

**Certification of Board Adoption**

  
Clerk of the Board

07/09/2021

Date