

**RESOLUTION 2022-16**

**AMENDING ERROR CORRECTIONS TO REFLECT BOARD OF SUPERVISORS  
ACTIONS TO RATIFY CERTAIN SERVICE CREDIT PURCHASES AND  
BOARD OF RETIREMENT DETERMINATIONS TO ADDRESS OTHER  
MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION ERRORS AS  
TO PARTIAL REDEPOSITS AND PRE-RETIREMENT DOMESTIC RELATIONS  
ORDERS, AND DIRECTING FILING OF NEW VOLUNTARY COMPLIANCE  
PROGRAM APPLICATION REGARDING SAME**

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WHEREAS, the Mendocino County Employees Retirement Association ("MCERA") Board of Retirement ("Board") adopted Resolution 2020-13 on November 4, 2020, describing the Voluntary Compliance Program Application ("2020 VCP Application") MCERA had submitted to the Internal Revenue Service ("IRS") and ratifying actions MCERA is taking to correct errors identified in the Historical Benefit Review Project, as described therein;

WHEREAS, on or about June 30, 2021, MCERA received a signed VCP Compliance Statement from the IRS, which, among other things, approved the proposed methods of correction for each of the eighteen (18) failures identified therein ("2021 Compliance Statement").

WHEREAS, by its Resolution 2021-05 and in accordance with the 2021 Compliance Statement, the MCERA Board approved certain modifications to its corrections relating to reimbursements of underpayments, optional settlement allowances, corrections of retirement benefits required by *Alameda County Deputy Sheriffs Assoc. v. Alameda County Employees' Retirement Association, et al.* (2020) 9 Cal.5th 1032 (*Alameda*) as described in Board Resolution 2020-8, and the correction of inactive accounts that did not receive semi-annual interest.

WHEREAS, by its Resolution 2021-196, the Mendocino County Board of Supervisors ("County Board") took action on December 14, 2021 that is subject to approval of the Internal Revenue Service ("IRS"), formally authorizing and ratifying purchases made under certain provisions of the Government Code as to periods during which MCERA permitted service credit purchases under those statutes (i.e., section 31641.56 for the period from 2002 through 2018 and section 31648.3 for the period from 2005 through 2015) (i.e., Failure #4 and Failure #7 in the 2020 VCP Application).

WHEREAS, by its Resolution 2022-148, the County Board took action on June 21, 2022 that is subject to IRS approval, formally authorizing and ratifying other purchases made under provisions of the Government Code as to periods during which MCERA permitted service credit purchases under those statutes (i.e., section 31641.1, 31641.2, 31641.3, 31641.4, 31641.8, 31641.9, 31641.95, 31470.7,

31478, 31479, and 31480, applicable from July 3, 1979 through December 31, 2014) (i.e., Failure #8 in the 2020 VCP Application).

WHEREAS, the Board has determined that Failure #5 in the Compliance Statement, subject to IRS approval, should be treated as credit for service prior to membership under section 31641.5, rather than an unauthorized partial re-deposit for prior service under section 31652.

WHEREAS, the Board has further determined with respect to Failure #9 in the 2020 VCP Application that, subject to IRS approval, MCERA will permit the implementation of *pre-retirement* Domestic Relations Orders (“DROs”) issued by courts prior to the 2020 VCP Application, as to which members and/or their nonmember former spouses were erroneously informed by MCERA that the former spouse would receive a benefit for the duration of their own life, even if the member pre-deceased them, such that the member may elect, on a one-time only and irrevocable basis, to provide the former spouse with an optional settlement continuance that is calculated as it would have been at the time the member retired were section 31764 (Optional Settlement 4) offered by MCERA at that time, analogous to the correction of Failure #3 in the 2020 VCP Application.

RESOLVED that the foregoing recitals are incorporated into this Resolution by this reference, and the Board hereby directs MCERA to file a new Voluntary Compliance Program application including the proposed foregoing amended error correction proposals soon as administratively feasible.

The foregoing resolution introduced by Dan Gjerde, seconded by Jerilyn Harris, and carried this 20th day of July, 2022 by the following vote:

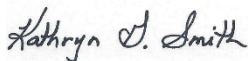
Ayes: Chamise Cubbison, Vincent Hawkins, Kathryn Cavness, Dan Gjerde, Kathryn Smith, Richard Shoemaker, and Jerilyn Harris.

Noes:

Abstain:

Absent: Quincy Cromer.

WHEREUPON, The Chair declared said Resolution adopted, and SO ORDERED.



Kathy Smith  
Board of Retirement Chair

Attest:



Doris L. Rentschler  
Executive Director