

RESOLUTION 2020 - 13

RATIFICATION OF VOLUNTARY CORRECTION IMPLEMENTATION

WHEREAS, the Mendocino County Employees Retirement Association (MCERA) Board of Retirement (Board) is charged with the administration and management of MCERA under Government Code sections 31520 and 31520.1 of the County Employees Retirement Law of 1937 (CERL);

WHEREAS, the Board has fiduciary responsibility for administering MCERA in a manner that will assure prompt delivery of benefits to members and beneficiaries of the retirement system under Article XVI, section 17 of the California Constitution;

WHEREAS, assets of MCERA are held in trust and must be used for the exclusive purposes of providing benefits to MCERA members and beneficiaries and defraying reasonable expenses of administering the retirement system under Article XVI, section 17 of the California Constitution;

WHEREAS, MCERA is a tax-qualified retirement plan under section 401(a) of the United States Internal Revenue Code ("Code");

WHEREAS, MCERA has adopted an Error Correction Policy, which governs the prospective and retroactive correction of benefit overpayments and underpayments made by the retirement system;

WHEREAS, the Board has conducted a review of the historical practices and procedures followed by MCERA in paying benefits to Members ("Historical Benefit Review Project") and has discovered that certain errors were made in the payment of MCERA retirement plan benefits;

WHEREAS, the Board filed an application with the Internal Revenue Service ("IRS") for approval of voluntary corrections of these errors to satisfy the requirements of the Code and to maintain the tax-qualified status of MCERA ("VCP Application") on May 29, 2020 ("VCP Date"); further, the VCP Application will be amended to identify errors previously addressed in the Board's Resolution 2020-8 regarding its implementation of Alameda and to specify that the designated beneficiary or estate of a deceased member will be permitted to take corrective actions and/or receive payments as specified herein;

WHEREAS, the Board now desires to ratify actions MCERA is taking to correct the errors that were identified in the Historical Benefit Review Project, consistent with the Error Correction Policy and consistent with the VCP Application;

WHEREAS, the Board has determined that all of errors identified in the Historical Benefit Review Project

¹All statutory references hereinafter are to the California Government Code unless otherwise stated.

were the result of MCERA staff errors in operating the plan and were not caused by misinformation provided to MCERA by its members or others on their behalf, and MCERA members reasonably relied on information MCERA provided; therefore, members have valid equitable defenses to any action that might be taken to recover overpayments from them. In addition, the Board has fiduciary reasons not to collect overpayments from them except in the context of an offset made from overpaid amounts. The Board therefore hereby ratifies invocation of the Board fiduciary and estoppel determination so as not to seek to recover such overpayments from members, unless directed to do so by the IRS as a condition to approval of the VCP Application, or by a final binding decision of a court of competent jurisdiction. The amount of these unrecovered overpayments shall be added to the Unfunded Actuarial Accrued Liability of the retirement system consistent with actuarial standards of practice; and

WHEREAS, the Board has determined that those members who were underpaid benefits should receive interest for the loss of use of these benefits because they were underpaid through no fault of their own and has authorized the payment of up to three years in interest on lump sum payments to members and beneficiaries reflecting previously underpaid amounts, as provided by the Error Corrections Policy. Further, where MCERA is refunding a lump sum amount that extended beyond three years, interest will apply to the entire period of the correction. Interest shall be calculated using the MCERA assumed rate of return during the period as to which the error is corrected for benefits, and using the member account crediting rate for corrections to contributions, as also provided by the Errors Correction Policy; therefore be it

RESOLVED that the foregoing recitals are incorporated into this resolution by this reference, and the Board takes the following actions:

1. Compensation Earnable for Periods of Leave Without Pay. Members who received Leave Without Pay (“LWOP”) during their final compensation period, and the computation for that absence was not “based on the compensation of the position held by the member at the beginning of the absence,” as provided by Section 31461, but instead was identified as having no compensation during the LWOP period, shall have their allowances prospectively adjusted to be calculated as required by Section 31641, provided that the member returned to active and contributory service in MCERA prior to retirement thus terminating their “absence”. These members shall also receive a lump-sum payment equal to the total amount of underpayments for the period of three (3) years prior to the Corrective Action Date forward, plus interest over that period. With respect to this item, MCERA has determined that it was on official notice of the error as of January 1, 2013, and thus that is the Corrective Action Date for purposes of corrective action of this error.
2. Final Compensation for Part-Time Service. Members who were in part-time service and had their “final compensation” under Section 31462.2 calculated at retirement as a pro rata percentage of full time pay for this period rather than by using compensation over their highest consecutive pay periods “during which the member rendered the equivalent of three years of full-time service” as provided by subsection (a) of that statute, shall have their allowances adjusted prospectively by using the compensation that is the equivalent of full-time service over the relevant time periods. These members shall also receive a lump-sum payment equal to the total amount of underpayments for the

period of three (3) years prior to the Corrective Action Date forward, plus interest over that period. With respect to this item, MCERA also has determined that it was on official notice of the error as of January 1, 2013, and thus that is the Corrective Action Date for purposes of corrective action of this error.

3. County Service Purchases—Deferred Status. Members who returned to county service after having been on deferred status and who purchased service credit for that time (“Intermittent Service Credit”), purportedly under the authority of a statute that the board of supervisors of the County of Mendocino (“County”) appears never to have adopted (Section 31641.56), and who have retired shall have their allowances adjusted prospectively by eliminating Intermittent Service Credit from the calculation of their allowances. These members shall also receive a lump-sum payment equal to the total amount of payments that the member made to purchase this service credit, less benefit overpayments made, plus interests. Members who have purchased Intermittent Service Credit but have not yet retired shall receive a refund of payments they made to purchase this service, plus interest earnings from the date of purchase, and shall not be credited with Intermittent Service Credit.
4. Partial Redeposits for Prior Service. Members who made a partial redeposit of contributions in the MCERA retirement fund to receive credit for prior service under Section 31652(a), rather than the full redeposit plus regular interest as provided therein, shall be given the option to make a full redeposit of all contributions, with regular interest from the date of separation from the retirement system in order to receive full credit for all prior service. Active and deferred members who do not exercise this option shall receive a refund of their partial redeposit of contributions (plus interest) and shall not receive any credit for prior service under the statute. Retired members who do not exercise this option shall have their allowances adjusted prospectively by elimination of all prior service credited under this statute. These members shall also receive a lump-sum payment equal to the total amount of payments that the member made to purchase this service credit plus interest from the date of purchase, less any benefit overpayments made, plus interest from the date of those payments, as a result of such re-deposits.
5. Incorrect Final Compensation Periods for Reciprocal Retirements. Members whose “final compensation” under Section 31462 was provided by a reciprocal retirement system, and where MCERA now has determined that it used incorrect calculations to determine the MCERA retirement allowance, shall have their allowances adjusted prospectively by using the correct calculations. The members who received underpaid allowances as a result of these miscalculations shall also receive a lump-sum payment equal to the total amount of underpayments for the period of three (3) years prior to the VCP Date, plus interest over that period. If members received overpaid benefits as a result of this error, those errors will be corrected in the same manner as other paid allowances are addressed in this resolution.
6. Purchase of Service Credit for Layoffs. Members who purchased service credit for periods when they were laid off from employment under Section 31648.3 (“Layoff Service Credit”), which the Board of Supervisors of the County appears never to have adopted, and who have retired shall have their allowances adjusted prospectively by eliminating Layoff Service Credit from the calculation of their

allowances. These members shall also receive a lump-sum payment equal to the total amount of payments that the member made to purchase this service credit plus interest, less any benefit overpayments made as a result of the Layoff Service Credit. Members who have purchased Layoff Service Credit but have not yet retired shall receive a refund of payments they made to purchase this service plus interest, and shall not be credited with Layoff Service Credit.

7. Purchase of Prior Public Service. Members who were first hired by the County before July 3, 1979 are the only MCERA members who are authorized by County Board of Supervisors resolutions to purchase prior public service credit as defined in Section 31641.2 (“PPS”). (See County Resolution 79-216 and Section 31641.95). Some of those legally authorized PPS purchasers (“Authorized Purchaser”) did not pay the full amount of contributions required to purchase this service credit under Section 31641.2, and they shall be given the option of paying the full amount of required contributions (plus regular interest under the statute) to receive full credit for their purchase of PPS. All active and deferred member Authorized Purchasers who do not exercise this option shall have their credited PPS adjusted downward in proportion to the amount of the required contribution that the member actually paid. All retired Authorized Purchasers who do not exercise this option, shall have their allowances adjusted prospectively by making the same downward adjustment to their credited portion of PPS. Any member who was first employed by the County on or after July 3, 1979 is an unauthorized PPS purchaser (“Unauthorized Purchaser”). All active and deferred member Unauthorized Purchasers shall receive a refund of payments they made to purchase this service (plus interest) and shall not be credited with PPS. All retired member Unauthorized Purchasers shall have their allowances adjusted prospectively by eliminating PPS from the calculation of their allowances. In addition, MCERA will offset the service credit purchase price (plus interest) against the amount of overpaid benefits to both authorized and unauthorized purchasers. If overpayments exceed refund owed, the excess overpayment amount will be added to UAAL. If the refund (plus interest) exceeds the overpayment, a refund will be made to the retired member.
8. Administration of DRO Benefits. Non-members who are receiving a portion of a surviving spouse’s continuation allowance as ex-spouses of members (or as their beneficiaries) pursuant to a divorce decree (“DRO”) may only receive such allowances for the life of the member’s surviving spouse. MCERA shall terminate any such allowances if the member’s spouse is deceased and shall take appropriate actions to correct DROs that appear to require continuation of these allowances beyond the life of the surviving spouse. The Board shall consider initiating civil proceedings to collect overpayment of these allowances in individual cases.
9. Retirement Eligibility at Age 70. Section 31706 and federal tax statutes require members to begin drawing their MCERA retirement allowance upon reaching 70.5 years of age. According to the SECURE Act, this rule applies to all distributions made with respect to members who attain age 70.5 on or before December 31, 2019. MCERA shall take actions to identify all members who have reached this age on or before December 31, 2019 and prospectively begin paying their retirement allowances. These members shall also receive a lump-sum payment equal to the total amount of required minimum distributions the member should have received beginning at age 70.5, plus interest over that period.

10. Final Average Compensation Period for Disability Retirements. Members whose disability retirement allowance was calculated using pay earned during a leave with pay period that occurred after the date of their retirement application (“Post-Application Pay”), notwithstanding the provision in Section 31462 that when members elect a final compensation period their “compensation earnable” is based on pay they received “at or before the time he or she files an application for retirement,” shall have their allowances prospectively adjusted. Members who were underpaid retirement benefits for this reason shall also receive a lump-sum payment equal to the total amount of underpayments for the period of three (3) years prior to the VCP Date, plus interest over that period.
11. Calculation of NSCD and Survivor Benefits. Members whose nonservice connected disability (NSCD) retirement allowances were incorrectly calculated using a former software program shall have their allowances prospectively adjusted to reflect correct calculations using the new software system. The members who received underpaid allowances as a result of these miscalculations shall also receive a lump-sum payment equal to the total amount of underpayments for the period of three (3) years prior to the VCP Date, plus interest over that period.
12. Incorrect Final Compensation Calculation for Disability Benefits. Members whose retirement allowances were calculated using their actual salary on their last day of employment, or their bi-weekly salary at the end of the calendar year, shall have their allowances prospectively adjusted by calculating the allowance using their three-year average final compensation as required under Section 31462. Any of these members who received underpaid allowances as a result of these miscalculations shall also receive a lump-sum payment equal to the total amount of underpayments for the period of three (3) years prior to the Corrective Action Date to the correction date, plus interest over that period. With respect to this item, MCERA has determined that it was on official notice of the error as of January 1, 2016, and thus that is the Corrective Action Date for purposes of corrective action of this error.
13. Aggregation of Service Credit Purchases. Members who purchased service credit at the incorrect rate shall be provided with the opportunity to make the full amount of required contributions (plus regular interest under the statute) to receive full credit for their purchase of service credit. For those who overpaid for their service credit purchases, MCERA shall refund the overpaid amount to the member, plus interest. All active and deferred members who do not elected to complete the service credit purchase shall receive prorated service credit so that the service credited is the equivalent of the amount actually paid. All retired members who do not elect to complete their service purchase will have their monthly retirement benefit recalculated based on a prorated service credit amount. The adjusted benefit shall be paid to the retired members prospectively.
14. Purchases of Contractor Service Credit. Members who purchased service credit for time during which the Member was an independent contractor of Mendocino County (or any other participating employer of MCERA) (“Contractor Service Credit”) and who have retired shall have their allowances adjusted prospectively by eliminating this purchased service credit from the calculation of their allowances. In addition, MCERA will offset the service credit purchase price (plus interest) against the amount of overpaid benefits. If overpayments exceed refund owed, the excess overpayment amount will be added to UAAL. If the refund (plus interest) exceeds the

overpayment, a refund will be made to the retired member in the amount of the excess. Members who have purchased Contractor Service Credit but have not yet retired shall receive a refund of payments they made to purchase this service (plus interest) and shall not be credited with Contractor Service Credit.

15. Underpaid Death Benefits. Beneficiaries who received a lump-sum death benefit under Section 31781.3 that was calculated using a three-year final average compensation, rather than the 12 months immediately preceding the death of the member as required by the statute, shall receive a lump-sum payment equal to the difference between those amounts for each affected survivor plus accrued earnings. Earnings shall be calculated as MCERA's assumed rate of return during the applicable 3-year look back period. MCERA shall also recalculate the monthly allowance paid under Section 31781.3(b), which is calculated using an offset the amount of the actuarial equivalent of the amount calculated in Section 31781.3(a). MCERA shall pay any amounts owed to an affected survivor under section 31781.3(a) recalculation to the extent the amount due exceeds any previously made overpayments of the section 31781.3(b) monthly allowance during the period covered by this error.
16. Ratification and Implementation. The board hereby ratifies the foregoing action. The MCERA Executive Director shall implement the directions set forth in this Resolution consistent with the terms and conditions of the Error Corrections Policy and shall periodically update the Board on further actions taken pursuant to this direction.

The foregoing resolution introduced by Dan Gjerde, seconded by Shari Schapmire, and carried this 4th day of November, 2020 by the following vote:

Ayes: Shari Schapmire, Julie Forrester, Kathryn Cavness, Kathryn Smith, Dan Gjerde, Quincy Cromer, and Tim Knudsen.

Noes: 0

Abstain: 0

Absent: Lee Parker and Jerilyn Harris.

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



Kathryn Cavness
Board of Retirement Chair

Attest:



Doris L. Rentschler
Executive Director