

**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)  
INTERNAL REVENUE CODE COMPLIANCE POLICY**

**I. GOVERNING LAW**

- 1) FCERA is an independent association to provide retirement benefits for eligible employees. FCERA was established by the County Employees Retirement Law of 1937, as amended from time to time ("CERL"). FCERA is governed by the California Constitution, CERL, other provisions of California law, and the regulations, policies and procedures adopted by the Board of Retirement of the Fresno county Employees' Retirement Association (the "Board") (collectively referred to as the "FCERA Plan" in this document). To the extent applicable, required provisions of the Code that are not reflected in the above documents comprising the FCERA Plan, are added with this Internal Revenue Code Compliance Policy.

**II. PURPOSE**

- 1) The purpose of this policy is to establish compliance with Title 26, Part IV, Subchapter D of the Internal Revenue Code of 1986, as amended (the "Code"), as applicable to the Fresno County Employees' Retirement Association (FCERA), which is intended to be a tax-qualified defined benefit governmental plan under Code Section 401(a). Certain provisions of the Code that apply to governmental plans and from time to time are amended. As such, FCERA's policies must also be amended from time to time to remain in compliance with the applicable provisions of the Code.

**III. POLICY GUIDELINES**

1) Objectives

- a) The objective of this Policy is to amend the FCERA Plan to comply with applicable sections of the Code necessary to retain the tax-qualified status of the FCERA Plan. This Policy should be considered part of the FCERA Plan and supplements the additional documents comprising the FCERA Plan.

2) FCERA Plan Amendments

- a) Codes Section 401(a)(2) (Exclusive Benefit Rule – No Reversion). Notwithstanding any provision of CERL or other component of the FCERA Plan to the contrary, the FCERA Plan shall be operated for the exclusive benefit of its members and as such, prior to the satisfaction of all liabilities, the trust fund assets shall not be used for, or diverted to purposes other than for the exclusive benefit of members.
- b) Code Section 401(a)(7) (Vesting). An FCERA Plan member shall be 100% vested in his or her contributions at all times. Upon termination of the FCERA Plan or complete discontinuance of employer contributions, all members shall be 100% vested in benefits accrued to the date of termination, to the extent the benefits are funded. Members shall be 100% vested in his or her retirement benefit upon becoming eligible

for such service retirement benefit or upon the attainment of normal retirement age, as such term is defined by the Board.

- c) Code Section 401(a)(8) (Forfeitures). The provisions of this section supplement the existing CERL Section 31485.13. Forfeitures of member benefits resulting from any reason may only be used to reduce future employer contributions. For purposes of clarification, the enhanced retiree benefits payable under the FCERA Plan are funded through excess earnings and not through FCERA Plan forfeitures.
- d) Code Section 401(a)(9) (Required Minimum Distributions). It is the intent of FCERA to operate the FCERA Plan in accordance with a good faith interpretation of Code Section 401(a)(9). To this end, the following provisions supplement CERL Sections 31485.14 and 31706, which state the general intention to operate in accordance with the required minimum distribution provisions of Code Section 401(a)(9), including the timing of benefit payments, distributions of benefits, and the incidental death benefits provisions of Code Section 401(a)(9). To the extent there is a conflict between this policy and the Code and Treasury Regulations, the applicable federal law will govern.
- i. Time and Manner of Distribution: General Rule: 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. For purposes of this provision, a designated beneficiary is the designated beneficiary under Code Section 401(a)(9) and Sec. 1.401(a)(9)-4 Q&A-1 of the Treasury Regulations.
- Required Beginning Date. The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date. The "required beginning date" is the later of April 1 following the calendar year in which a member turns age 72 or the April 1 following the calendar year in which the member terminates employment.
  - Death of Member Before Distributions Begin. If the member dies before distributions begin, the member's entire interest will be distributed over the life expectancy of the designated beneficiary in accordance with regulations under Code Section 401(a)(9) and taking into consideration whether the beneficiary is the surviving spouse. Such distribution shall begin to be distributed no later than December 31 of the calendar year immediately following the calendar year in which the member died (unless the beneficiary is the surviving spouse and if later, then by December 31 of the calendar year in which the member would have attained age 72). In the alternative and at the beneficiary's election, the member's entire interest must be distributed within five years of the member's death. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the

member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

- **Death of Member After Distributions Begin.** If a member dies after distributions begin, then the member's entire interest shall be distributed at least as rapidly as under the method of distribution used prior to the member's death.
- ii. **Form of Distribution.** The form of distribution shall be in accordance with the provisions of the FCERA Plan and in accordance with a good faith interpretation of the applicable requirements of Code Section 401(a)(9) and the Treasury Regulations.
- iii. **Compliance with Incidental Death Benefit Rules:** Distributions under this provision to a beneficiary shall not exceed the maximum amount determined under the incidental death benefit requirement of Code Section 401(a)(9)(G) and, to the extent required in order to be consistent with a good faith interpretation of the Code, section 1.401(a)(9)-6 Q&A 2 of the Treasury Regulations. Death and disability provisions are also limited by this rule, to the extent required in order to be consistent with a good faith interpretation of the Code.
- e) **Distributions of Cashouts –** Distributions of a member's pre-tax contributions to the FCERA Plan shall be in accordance with applicable Federal law.
- f) **Code Section 401(a)(16) (Maximum Benefits).** CERL Section 31899 states that benefits and contributions amounts will not exceed the Code Section 415 limits. These limits are described in detail in the Code Section 415 Compliance section of this Policy. To the extent a member's benefits and/or contributions to the member would exceed such limits, then such member's benefits under the FCERA Plan would be reduced in an amount necessary to bring the member within such levels. The Fresno County Replacement Benefits Plan ("Replacement Benefits Plan") is designed to ensure that benefits payable under the FCERA Plan do not exceed Code Section 415 limits and any additional benefits owed to the member are paid out of the Replacement Benefits Plan.
- g) **Code Section 401(a)(17) (Compensation Limits).** CERL Section 31671 states that the compensation limits under the Code apply to anyone who first is a member of the system on or after July, 1996. The policy outlined below is intended to clarify this general provision:
  - i. **General Rule for Limitation Years Beginning before July 1, 2002.** Except as set forth below, notwithstanding the limits set forth in CERL, the annual compensation of a member that is taken into account in determining benefit accruals in any limitation year beginning after July 1, 1996 shall not exceed the limit set forth in Code Section 401(a)(17) (\$150,000, as adjusted for cost-of-living increases

pursuant to Code Section 401(a)(17)(B)). Annual compensation for this purpose means compensation earned during the limitation year, as defined in 2(A) below.

- ii. Increase in Limit.
  - Notwithstanding the provisions above, the annual compensation of each member taken into account in determining benefit accruals in any FCERA Plan Year beginning on or after July 1, 2002 shall not exceed \$200,000, as adjusted. For this purpose, annual compensation means earnings during the limitation year. For purposes of determining benefit accruals in a limitation year beginning on or after July 1, 2002, Earnings for any prior limitation year shall be limited as provided below in “Compensation Limit for Prior Determination Periods.” (The limitation year is the FCERA Plan year.)
  - Cost-of-Living Adjustment. The \$200,000 limit on annual compensation above shall be adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the limitation year that begins with or within such calendar year. For the 2010 and 2011 limitation years, the compensation limit is \$245,000.
    - (1) Compensation Limit for Prior Determination Periods. In determining benefit accruals in Plan Years beginning on or after July 1, 2002, the annual compensation limit above, for determination periods beginning before July 1, 2002, shall be \$200,000.
    - (2) Special Rule for Pre-July 1, 1996 Members (CERL Section 31671). In accordance with CERL Section 31671, the annual compensation limit does not apply to a member who first became a member prior to July 1, 1996. Members who first become members on or after July 1, 1996 shall be subject to the above-described compensation limits.
    - (3) Proration for Short Plan Years. If the limitation year is a short year (less than 12 months) then the applicable compensation limit will be the compensation limit multiplied by a fraction, the numerator of which is the number of months in the short plan year, and the denominator of which is 12.
- h) Code Section 401(a)(25) (Definitely Determinable Benefits). It is the policy of FCERA to include the actuarial assumptions and interest rates used to determine benefit amounts of members in the resolutions passed by the Board in a manner that precludes employer discretion. It is intended that these resolutions be considered part of the FCERA Plan by reason of such inclusion.
- i) Code Section 401(a)(31) (Rollovers out of the FCERA Plan). This provision is designed to supplement CERL Section 31485.15, which provides that in accordance with Code

Section 401(a)(31), a “person entitled to a distribution” may elect a direct trustee-to-trustee transfer of benefits to an eligible plan, subject to the terms and conditions established by the Board.

- i. Notwithstanding any provision of the FCERA Plan to the contrary that otherwise would limit a Distributee’s election, a Distributee may elect, at the time and in the manner prescribed by the Board or its delegate, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
  - ii. Definitions. For purposes of this provision, the following terms shall have the definitions set forth below:
    - Distributee. A Distributee includes (i) a member (ii) the member’s surviving spouse, (iii) the member’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), with regard to the interest of the alternate payee; and (iv) a nonspouse designated beneficiary in receipt of death benefits with respect to a member.
    - Direct Rollover. A Direct Rollover is a trustee-to-trustee payment by the FCERA Plan to the Eligible Retirement Plan specified by the Distributee.
    - Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee within the meaning of Code Section 402(c)(4), and 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 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 (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); other distributions that are excluded pursuant to applicable law, Treasury regulations or IRS administrative pronouncements; and any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200) during a tax year.
- (1) A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Code Section 408(a) or (b) of the Code; (2) for taxable years beginning after December 31, 2001 and before January 1, 2007: to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or

(3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- Eligible Retirement Plan. An Eligible Retirement Plan is (i) an individual retirement account described in Code Section 408(a); (ii) an individual retirement annuity described in Code Section 408(b) (other than an endowment contract); (iii) an annuity plan described in Code Section 403(a); (iv) a qualified trust described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution; (v) an annuity contract described in Code Section 403(b) that accepts the Distributee's Eligible Rollover Distribution, (vi) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this FCERA Plan; or (vii) a Roth IRA described in Code Section 408A, provided that the requirements of Code Section 408A(c)(3)(B) (as in effect before 2010) are satisfied. The definition of "Eligible Retirement Plan" shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p). Notwithstanding the foregoing, with respect to a non-Spouse Designated Beneficiary, the definition of "Eligible Retirement Plan" includes only an individual retirement plan that is described in Code Section 402(c)(8)(b)(i) or (ii), or to the extent applicable, a Roth IRA described in Code Section 408A, both of which satisfy Code Section 402(c)(11), and are established for the purpose of receiving the distribution.

- iii. General. The provisions of the Code either permitting a plan distribution to be rolled over or prohibiting a plan distribution from being rolled over in a direct rollover from the FCERA Plan to another plan shall supersede any inconsistent provisions of this section.
- j) 401(h). [Reserved]
- k) Code Section 414(p) (Qualified Domestic Relations Orders). To the extent applicable, payment of benefits under the FCERA Plan shall be made in a way as to comply with and be in accordance with the applicable requirements of any "qualified domestic relations order" within the meaning of Code Section 414(p), and such payment shall be a complete discharge of liability with respect thereto.
- l) Code Section 414(u) (Military Benefits, USERRA and HEART Act).

- i. The purpose of this section is to supplement the existing provisions of CERL Section 31485.7, which provides for compliance with certain laws relating to qualified military service. Notwithstanding any provision of the FCERA Plan to the contrary, and effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).
  - ii. Notwithstanding any other provisions of the FCERA Plan to the contrary and effective January 1, 2009, if a member who is on active military duty receives differential wage payments (as defined in Code Section 3401(h)(2)), such differential wage payments shall be treated as compensation for purposes of applying the limits on annual additions under Code Section 415(c), to the extent required by Code Section 3401(h) and Code Section 414(u)(12) and any additional IRS guidance, including without limitation, IRS Notice 2010-15.
- m) Code Section 415 (Limitation on Benefits and Contributions). It is the intent of policy to supplement the general Code Section 415 compliance language described in CERL Sections 31899 and 31588, and through the concept of the Replacement Benefits Plan, which provide that benefits paid under the FCERA Plan are limited by Code Section 415. Any benefits in excess of these limits, to the extent payable, are paid not through the FCERA Plan, but through the Replacement Benefits Plan. To the extent benefits are paid through the Replacement Benefits Plan, such amounts are not taken into account for purposes of determining compliance with Code Section 415. To the extent required to comply with Code Section 415, adjustments to benefits payable with respect to the member shall be made under the FCERA Plan is not made under another plan. For purposes of applying Code Section 415, the limitation year is the FCERA Plan Year.
- i. Code Section 415(b)(10) Grandfathering Election. In accordance with CERL Sections 31899, 31899.2 and 31899.8, the FCERA Plan has made a Code Section 415(b)(10) grandfathering election. To this end, and notwithstanding anything in the FCERA Plan or applicable law to the contrary, the maximum defined benefit limitation with respect to a person who first became a FCERA Plan member prior to January 1, 1990 will not be less his or her accrued benefit under the FCERA Plan determined in accordance with the FCERA Plan provisions as in effect October 14, 1987.
  - ii. Code Section 415(b)(1) General Limitation for Defined Benefit Plans. For limitation years beginning after December 31, 1994, a member's annual benefit may not exceed the dollar limit specified in Code Section 415(b)(1)(A) (\$160,000 as adjusted in accordance with Code Section 415(d)), subject to the applicable adjustments in Code 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 Section 31899. (Prior to January 1, 1995, the general limitation also included a limitation based on 100% of compensation.)

- iii. Code Section 415(b)(2) Annual Benefit: Adjustment for Certain Other Forms of Benefit. For purposes of Code Section 415(b) and this Policy, the “annual benefit” means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which no employee contributions or rollover contributions are made. To the extent the annual benefit is a form other than the straight life annuity, for purposes of applying the Code Section 415 limits, such contributions are not made for purposes of determining the 415(b) limits. Such adjustments shall be in accordance with Code Section 415(b)(2)(B) and shall take into account only those factors as specified in Code Section 415(b)(2)(B) and the applicable Treasury Regulations.
- For purposes of adjusting any benefit to the “annual benefit” for any form of benefit paid in a form to which Code Section 417(e)(3) does not apply, the adjustment shall be made in accordance with Treasury Regulation Section 1.415(b)-1(c)(2) and applicable IRS guidance, including without limitation, Rev. Ruling 2001-62 and Rev. Ruling 2007-67, or
  - For purposes of adjusting any benefit to the “annual benefit” for any form of benefit subject to Code Section 417(e)(3), such adjustment shall be in accordance with Treasury Regulation Section 1.415(b)-1(c)(3). In addition, for plan years beginning after December 31, 2008, the “applicable mortality table”, as such term is defined in Code Section 417(e)(3)(B) and in applicable IRS guidance and the “applicable interest rate”, as such term is defined in Code Section 417(e)(3)(C) and in applicable IRS guidance. To the extent the IRS issues supplemental guidance to explain or simplify the process of adjusting benefits to the “annual benefit” (single life form of annuity) payment, the FCERA Plan is permitted to adopt such guidance through informal policy or procedure.
- iv. Code Section 415(b)(2) Annual Benefit: Adjustment to Limit Where Benefit Begins Before Age 62 or After Age 65. The general limitation under Code Section 415(b) shall be adjusted (reduced) if the retirement income benefit begins before age 62 in accordance with Code Section 415(b)(2)(C) and 415(b)(2)(E)(i), except to the extent the benefit is payable to a “qualified participant”, as such term is defined in Code Section 415(b)(2)(H). The general limitation under Code Section 415(b) shall be adjusted (increased) to account for retirement income beginning after age 65, in accordance with Code Section 415(b)(D) and 415(b)(2)(E)(iii).
- Exceptions to reduction of limit under Code Section 415(b)(2)(C).
    - (1) Payments to a qualified participant (Code Section 415(b)(2)(H)): The limitation on payments to a member of the FCERA Plan whose service taken into account under the FCERA Plan includes at least 15 years of service as a full-time employee of any police or fire department of a participating FCERA employer, or as a member of the U.S. Armed Forces



shall not be reduced for early commencement in accordance with (4) above.

(2) The reductions provided for in (4) above and (5) below do not apply for survivor and disability benefits described in Code Section 415(b)(2)(I).

(3) Total annual benefits that do not exceed \$10,000 (as determined under Code Section 415(b)(4)) for the limitation year do not exceed the limitations set forth herein.

- v. Code Section 415(b)(2)(5); Adjustment (Reduction) for Participation or Service of Less than 10 Years. The dollar limit shall be reduced to account for participation or service by a member of less than 10 years. Such reduction shall be determined in accordance with Code Section 415(b)(2)(5).
- vi. Cost of Living Adjustments with Respect to 415(b) Limitations. CERL Section 315338 states that COLA increases continue to apply when considering 415(b) limitations. To the extent a member's benefit exceeds the 415(b) limit after taking into account the COLA limitations, FCERA is permitted under CERL to take any additional action with respect to from of benefit or otherwise to ensure that the amount payable under the FCERA Plan does not exceed the applicable limit.
- vii. Code Section 415(c) (Limitations on Contributions and other Additions).
- General Rule: To the extent applicable, after-tax member contributions or other annual additions with respect to a member may not exceed the amount specified in Code Section 415(c)(1) (the lesser of \$49,000 (as adjusted pursuant to Code Section 415(d)) or 100% of the member's compensation.) Annual additions are defined in Code Section 415(c)(2).
  - 415 Compensation. For purposes of applying the limitation of Code Section 415 compensation is compensation that complies with the Treasury Regulations Sec. 1.415(c)-2 and for limitation years beginning after December 31, 1997, compensation will also include amounts excluded from gross income of a member by notice of a member's election to defer compensation pursuant to Code 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 in accordance with Code Section 132(f)(4). For limitation years beginning on and after July 1, 2007, compensation for the limitation year shall also include post-severance payments of regular compensation described in Treasury Regulation Section 1.415(c)-2(e)(3)(ii) that are paid within the time limits described in Treasury Regulation Section 1.415(c)-2(e)(3)(i) (i.e., 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). For purposes of clarification,

regular compensation described in Treasury Regulation Section 1.415(c)-2(e)(3)(ii) are payments of 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.

(1) For limitation years beginning on or after July 1, 2007, a member's compensation for purposes of this section shall not exceed the annual limit under Code Section 401(a)(17).

(2) [Determine how they would like to handle military payments or if they would like to address them in a separate policy.]

viii. Code Section 415(f) Combining of Plans. In accordance with Code Section 415(f), purposes of applying the applicable Code Section 415 limits, all defined benefit plans shall be aggregated for purposes of Code Section 415(b) and all defined contribution plans shall be aggregated for purposes of Code Section 415(c).

ix. Code Section 415(k) Special Rules – Repayment of Cashouts. Repayment of contributions (including interest thereon) to the FCERA Plan with respect to an amount previously refunded upon a forfeiture of service credit under the FCERA Plan (or another governmental plan maintained by a State or local government employer within the state of California) shall not be taken into account for purposes of Code Section 415, in accordance with applicable Treasury Regulations.

x. Code Section 415(m) (Qualified Governmental Excess Benefit Arrangements). In accordance with CERL Section 31899.4, adjustments to benefit amounts to account for Code Section 415 limits shall be in accordance with the provisions of the Replacement Benefits Plan and CERL Section 31538.

xi. Code Section 415(n): Special Rules Relating to the Purchase of Permissive Service Credit.

- Effective for permissive service credit contributions made in limitation years beginning on or after July 1, 1998, if a member makes one or more contributions to purchase permissive service credit under the FCERA Plan, then the requirements of Code Section 415(n) will be treated as met only if:

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

- (2) the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).
  - (3) For purposes of applying this section, the FCERA Plan will not fail to meet the reduced limit under Code Section 415(b)(2)(C) solely by reason of this subsection IV.M.(11) and will not fail to meet the percentage limitation under Code Section 415(c)(1)(B) solely by reason of this subsection IV.M.(11).
- For purposes of this subsection IV.M.(11) the term “permissive service credit” means service credit:
    - (1) recognized by the FCERA Plan for purposes of calculating a member’s benefit under the FCERA Plan,
    - (2) which such member has not received under the FCERA Plan, and
    - (3) which such member may receive only by making a voluntary additional contribution, in an amount determined under the FCERA Plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.
      - (a) Effective for permissive service credit contributions made in limitation years beginning on or after July 1, 1998, 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 FCERA Plan.
  - The FCERA Plan shall fail to meet the requirements of this section if—
    - (1) more than 5 years of nonqualified service credit are taken into account for purposes of this subsection IV.M.(11), or
    - (2) any nonqualified service credit is taken into account under this subsection IV.M.(11) before the member has at least 5 years of participation under the FCERA Plan.
  - For purposes of subsection (C), effective for permissive service credit contributions made in limitation years beginning on or after July 1, 1998, the term “nonqualified service credit” means permissive service credit other than that allowed with respect to—
    - (1) 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 Code Section 415(k)(3)),

- (2) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause 1(A)) of an education 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,
  - (3) service as an employee of an association of employees who are described in clause (i), or
  - (4) military service (other than qualified military service under Code Section 414(u)) recognized by the FCERA Plan.
    - (a) In the case of service described in clause (i), (ii), or (iii), 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.
- In the case of a trustee-to-trustee transfer on or after July 1, 1998, to which Code 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):
    - (1) the limitations of subsection (C) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
    - (2) the distribution rules applicable under Title 26, Part IV, Subchapter D of the Internal Revenue Code to the FCERA Plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.
  - Special Transition Rule. With regard to permissive service credit purchased before August 5, 1997, the limits under Code Section 415(c) do not reduce the amount of permissive service credit allowed under the terms of the FCERA Plan as in effect on August 5, 1997 for an eligible member. For these purposes, an eligible member is an individual who first became a member in the FCERA Plan before the first plan year beginning after the last day of the calendar year in which the next regular session after August 5, 1997 of the legislature of the state of California.

- n) Code Section 503 (Prohibited Transactions). The FCERA Plan is subject to the prohibited transaction rules of Code Section 503 and as such, shall not engage in transactions that fall within the category of prohibited transactions, including without limitation, the acquisition by the trust of employer obligations.

**IV. Policy Review**

- 1) The Board shall review this Policy at least every three years to assure its efficiency and relevance. This Policy may be amended from time to time by majority vote of the Board.

**V. Policy History**

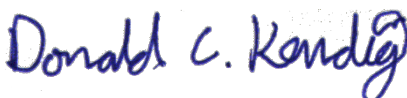
- 1) The Board of Retirement adopted on January 15, 2014.
- 2) The Board of Retirement reviewed and modified this policy on February 1, 2017 and February 19, 2020.

**VI. Secretary's Certificate**

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

February 19, 2020

***Date of Action:***



***By: Retirement Administrator***