



Board Administration Policy

Retiree Medical Benefits Accounts - IRC 401(h)

I. Purpose and Effective Date

- A. In accordance with CERL sections 31691 and 31694, this policy is only operative for the period from 1989 through January 1, 2011, during which the Association paid retiree medical benefits from the Association, to reaffirm and clarify the existing practices of the Association with respect to the requirements under Internal Revenue Code section 401(h) and thereafter are inoperative for the Association.

II. Compliance with The Tax Code Section 401(h) Requirements

A. General Rule

1. All retiree medical benefit payments made by the Association will comply with all applicable federal laws, including Code section 401(h). To the extent there may be a conflict between this policy and Code section 401(h) or the Treasury Regulations issued thereunder, the Code and Treasury Regulations shall govern.

B. Compliance with Provisions of the Code

1. The Association must specify the medical benefits, which will be available and must set out the amount that will be paid for those benefits.
2. Medical benefits must be subordinate to the retirement benefits, when added to any life insurance benefits. Contributions shall be limited to the extent necessary to ensure that the retiree health benefits are subordinate to the retirement benefits provided by the Association as required by Code § 401(h).
3. A separate account must be maintained for contributions to fund the medical benefits.
4. Amounts credited to the 401(h) account may be invested with other Association funds set aside for retirement purposes, without identification of which investments are allocable to each account. However, earnings on each account shall be allocated to each in a reasonable manner.
5. Amounts contributed for medical benefits must be reasonable and ascertainable. The County and any applicable participating employer will, at the time it makes a contribution to the Association, designate in writing to the Association that portion of the contribution allocable to the 401(h) account to be used solely for health benefits.
6. No part of the medical benefits account may be used for or diverted to any purpose other than providing medical benefits and paying necessary or appropriate expenses for the administration of the medical benefits account.
7. No retiree health benefits provided under the 401(h) account will

discriminate in favor of highly compensated employees.

8. Any amounts remaining in the medical benefits account after satisfaction of all medical benefits liabilities for all Members, spouses and dependents must be returned to the employer.
9. If any Member's interest in the medical benefits account is forfeited prior to plan termination, an amount equal to the forfeiture must reduce employer contributions to fund the account.
10. Separate accounts are not required for key employees because no member of the Association is a key employee under the definitions of the Code.

C. Compliance with the CERL

1. In accordance with 31592.4 of the CERL, amounts may be credited from the excess earnings of the Association that are available at the end of the fiscal year to an employer advance reserves account which is used to pay annuity benefits (but not to pay health benefits), and such amounts will be treated as contributions by the employer to the Association. Amounts shall be credited to the employer advance reserves from the Association excess earnings only to the extent that in the immediately succeeding fiscal year the employer transfers equal dollar amounts to the 401(h) account. In this way, both the requirements of the Code and the CERL will be met so retirees can receive tax-free medical benefits.
2. To the extent required by the CERL, the 401(h) account shall be deemed to be an employer advance reserves account.

III. Definition of Employer Advance Reserve

- A. Employer advance reserve means the account, which records contributions to the Association made by the County and additions to and subtractions from that account. For purposes of this policy, employer advance reserve includes a similar reserve, if any, held for other governmental entities authorized by the CERL that contribute to the Association. An employer advance reserve account records a portion of all of the assets held by the Association solely to provide for retirement benefits (including disability, death and other ancillary benefits) of all Members and to provide for reasonable administrative expenses, along with other accounts that record assets used solely for these purposes including but not limited to Member contribution accounts and other reserve accounts. A transfer between any of these accounts is a transfer for recording purposes only and is not a transfer between accounts that are used for retirement benefits and for any other purpose.

IV. Law Prevails

- A. In the event a conflict between this policy and the County Employees Retirement Law, the Public Employees' Pension Reform Act, or other applicable statute arises, the law shall prevail.


V. 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.

VI. History

01/01/2015	Effective Date of Bylaw Section 28
12/08/2017	Extracted from Bylaws
06/29/2018	Staff reviewed, no content changes; updated format
04/12/2019	Policy Review section amended to at least once every three years
07/09/2021	Staff reviewed, no content changes

Certification of Board Adoption:


Clerk of the Board

07/09/2021

Date