

**MARIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (MCERA)  
UNRESTRICTED EARNINGS POLICY**

**ADOPTED: October 13, 2010  
AMENDED: February 9, 2011  
REVIEWED: March 12, 2014  
REVIEWED: December 14, 2016  
REVIEWED: January 8, 2020  
REVIEWED: October 12, 2022**

**I. BACKGROUND TO THIS POLICY**

MCERA has not previously adopted an unrestricted or “excess” earnings policy.

During 2009, the MCERA Board of Retirement (Board) directed staff, MCERA’s actuary, and counsel to assist it in developing a policy regarding the use of “excess” earnings of MCERA, as those earnings are defined in, among other provisions, Government Code sections 31592.2 and 31874.3. For the reasons set forth therein, this policy is to be read in conjunction, and consistently, with MCERA’s Interest Crediting Policy.

Reasonable advance notice of the proposed establishment of this policy, as well as of any proposed changes to the policy, or of any proposed changes to the uses of unrestricted earnings under it, by the Board once it has been established, will be provided to recognized retired employee organizations in accordance with Government Code section 31592.5.

**II. PURPOSE OF THIS POLICY**

The purpose of this policy is to establish a methodology to administer the unrestricted earnings of MCERA in compliance with the County Employees’ Retirement Law of 1937 (Cal. Gov. Code sec. 31450 et seq.) (“CERL”).

**III. GOVERNING LAW**

MCERA is governed by article XVI, section 17 of the California Constitution, the applicable provisions of CERL, as well as other state and federal laws that govern public retirement systems.

CERL provides MCERA members with statutory rights to certain retirement and related benefits, and affords MCERA’s plan sponsors options to grant their employees those benefits on a vested or, in some cases non-vested, basis in accordance with applicable law. CERL also provides the

MCERA Board with the authority and discretion to use unrestricted earnings of the retirement system to provide non-vested benefits to certain MCERA members on the conditions set forth by statute, and consistent with the Board's fiduciary duties of prudence and loyalty.

The Board's duty of prudence requires it to inform itself of applicable laws and actuarial and funding principals so as to make an informed and reasonable decision regarding the terms of this policy. The Board's duty of loyalty requires it to balance the interests of the active, deferred, and retired members of MCERA and their survivors and beneficiaries (collectively "Members") and determine, in its sound and reasonable discretion, that the policy it adopts serves the current overall best interests of MCERA's Members.

This policy, including any changes to it that the Board may choose to make in the future, provides guidelines to be followed by the Board in administering the benefits granted by the County of Marin ("County") and MCERA's other plan sponsors in compliance with CERL and other applicable law, and in managing the assets that pay those benefits as well as other benefits permitted to be paid with unrestricted earnings.

Assets held in Internal Revenue Code ("IRC") section 401(h) accounts for retiree health benefits must by law be accounted for separately from assets held for retirement/pension benefits and are not subject to this policy. In addition, under IRC section 401(h), assets held by a federally tax-qualified plan such as MCERA to pay retirement/pension benefits, may not be used to fund retiree health benefits.

#### **IV. POSSIBLE USES OF UNRESTRICTED EARNINGS**

After completing MCERA's interest crediting and establishing a non-valuation contingency reserve for each employer valuation group (currently, the County, City of San Rafael, and Novato Fire Protection District) ("Employer Group"), as provided by the MCERA Interest Crediting Policy, then

Step 1: MCERA will first credit to the Retiree Reserves of an Employer Group an amount sufficient to bring the amounts in those reserves up to the level that MCERA's actuary recommends will fund 100% of the present value of the projected benefits to be paid from those reserves to the retirees as of the most recent valuation date.

Step 2: If Available Earnings remain after completing Step 1, then the Board may, in its sound discretion, consider the following:

A. If at least one percent (1%) of MCERA's total retirement system assets are collectively maintained in the Employee Group Statutory Contingency Reserves and the overall

funded status of the plan is 80% or greater, the Board may consider a transfer to a non-valuation reserve or designation to pay an ad hoc supplemental COLA as permitted by law. Ideally, before transferring any assets to such non-valuation reserve, the overall funded status of the plan should be approximately 100%.

- B. Transfer to a reserve or designation for other uses as permitted by law.
- C. Continue to maintain the funds in the Unrestricted Earnings valuation reserve.

Prior to implementing A or B above, the Board must obtain: (1) from MCERA's actuary, an analysis of the impact of such actions on factors such as (i) future annual contributions rates, (ii) the unfunded actuarial accrued liability of MCERA and each of its employer valuation groups; and (iii) resulting funding ratios; and (2) the advice of MCERA's legal counsel. The Finance and Risk Committee will review these results and recommend to the Board if either action A or B should be implemented.

**V. EFFECTIVE DATE, LACK OF VESTED RIGHTS, AND PERIODIC REVIEW**

This policy is effective on the same date as the Interest Crediting Policy that is referenced herein.

This policy remains subject to revision by the Board at any time, does not create any vested rights for any Members, and will be reviewed for potential modification by the Board at least once every three (3) years.

**VI. RETIREMENT ADMINISTRATOR'S CERTIFICATE**

I, Jeff Wickman, the duly appointed Retirement Administrator of the Marin County Employees' Retirement Association, hereby certify the review of this policy by the Marin County Employees' Retirement Association.

Dated: October 12, 2022



Retirement Administrator