



June 27, 2023

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, California 93009

Subject: Approval of the County of Ventura Retiree Medical Expense Reimbursement Plan Document and Section 115 Trust Agreement Plan Document.

Recommendations

It is recommended that your Board approve the attached proposed County of Ventura Retiree Medical Expense Reimbursement Plan Document (the "Plan") and the Section 115 Trust Agreement Plan Document (The "Trust").

Fiscal/Mandates Impact

The approval of the Plan and Trust documents will have no fiscal impact. The plan documents set up the structure for creating Healthcare Reimbursement Accounts (HRA) for Legacy Retirees. HRAs will become active only upon your Board's approval of successful collective bargaining agreements with represented groups, and amendments to the Management, Confidential Clerical, and Other Unrepresented Employees Resolution for non-represented employees. This recommendation is presented to your Board at this time to facilitate the implementation of the Plan should agreement be reached with represented employee groups and is approved by your Board.

Discussion

On April 17, 2023, the Board of Retirement passed a Resolution (Exhibit 1) that reduces the pension benefits for all members of VCERA legacy pension plans who retire on or after July 30, 2020. VCERA counsel advised the Board of Retirement that the *Alameda* Decision precludes the inclusion of in-kind benefits (that cannot be converted to cash) in compensation that may be used to calculate pension benefits, and that a significant portion of the County's Flexible Benefit Allowance was an in-kind benefit. The Resolution was passed because the Board of Retirement was advised that it did not have discretion in the matter and had to take action in order to ensure compliance with the *Alameda* Decision (*Alameda County Deputy Sheriff's Assoc. et al. v. Alameda County Employees'*

Retirement Assn., et al. (2020) 9 Cal.5th 1032) issued by the California Supreme Court on July 30, 2020.

The County has disagreed with VCERA counsel's interpretation of the *Alameda* Decision and has initiated numerous efforts to clarify the legal aspects of the Decision, including partnership with SEIU and our state representatives to introduce legislation clarifying that the *Alameda* Decision did not pertain to the County's Flexible Credit Allowance, which has been included in legacy pension calculations since the early 1980s. Unfortunately, after much support and effort, the legislation was vetoed by Governor Gavin Newsom.

The VCERA Resolution provides that significant portions of the County's Flexible Credit Allowance will no longer be considered in the retirement compensation calculation for legacy retirement plan participants. As a result, approximately 4,000 active and 700 retired legacy members (i.e., individuals who were members of VCERA prior to January 1, 2013, or who have attained reciprocity with VCERA as a result of eligible service prior to January 1, 2013) will experience a decrease in their pension benefits. The reduction in benefits will depend upon each individual's years of service and age at retirement but will impact lower income individuals more significantly because the reduction will be a flat dollar amount, therefore larger as a percentage of total compensation.

The VCERA Resolution will also result in the return of employee contributions and interest thereon for amounts excluded from pension compensation under the VCERA Resolution. There will likely be employer pension cost savings.

The County is currently negotiating with our labor partners potential measures to mitigate the impact of implementation of the VCERA Resolution. A primary mitigation measure is the creation of a Retiree Medical Expense Reimbursement Plan, that includes individual Healthcare Reimbursement Arrangements (HRA) for retirees and surviving beneficiaries who receive pension benefits from VCERA. An HRA provides a monthly benefit that can reimburse IRS-eligible healthcare expenses and insurance premiums. This arrangement may be funded in a trust and operate under the provisions of Internal Revenue Code Section 115, and in accordance with government-accepted accounting standards. If the unions agree to this arrangement, HRA benefits will be administered by the County and run concurrently with pension benefits once an employee retires.

The recommended County of Ventura Retiree Medical Expense Reimbursement Plan Document (Exhibit 2) establishes the HRA Plan and defines Plan parameters, including eligibility, participation, benefits, funding, payment of benefits, and plan administration.

Similarly, the attached proposed County of Ventura Section 115 Trust Agreement Plan (Exhibit 3) outlines the Trust's purpose, administration, contributions and distributions, investments, and defines the trustee's powers and duties.

Eligibility and Participation

The Plan offers coverage to eligible retirees and surviving beneficiaries of retirees who: 1) must currently be represented by a union/association that adopts the Plan as part of its memorandum of understanding or covered by the Management Resolution; 2) commenced employment with the County no later than one day before the Board of Retirement's adoption of the Resolution on April 17, 2023; 3) retire from County service on or after July 30, 2020, and are an annuitant from VCERA as a result of participation in a VCERA legacy retirement plan; and 4) have pension benefits reduced pursuant to the VCERA Resolution.

Benefits

The Plan provides a monthly healthcare subsidy for members, which will be credited to their individual HRAs. This subsidy can be used to reimburse eligible healthcare expenses when the member begins receiving VCERA annuity payments. The monthly subsidy amount will be determined based on the respective bargaining agreement of each member. Additionally, your Board may increase the maximum monthly healthcare subsidy by a maximum of three percent (3%) each year, and a predetermined amount will be set for new retirees by your Board before each Plan Year commences.

Each member's HRA balance will roll over and remain available every Plan Year. Additionally, when a retiree passes away, if the retiree has a surviving beneficiary that receives a pension payment from VCERA, the surviving beneficiary will be able to access the balance of the HRA and will receive monthly benefits until they pass away. However, once both the retiree and their eligible beneficiary pass away, their remaining HRA funds will be forfeited and returned to Plan general assets after the end of the one-year (12-month) Claim Run-Out Period.

Plan Administration

We will return to your Board with a recommendation for a third-party administrator (TPA) to maintain records of participant accounts and process claims. It is anticipated that implementation of the Plan will take approximately three to four months from the date the recommended TPA is approved by your Board.

The Plan Document also specifies an oversight committee to be appointed by your Board, consisting of the following County Officials or their representatives: County Executive Officer, Director of Human Resources, Auditor-Controller, County Counsel, and Treasurer-Tax Collector.

Funding

The proposed funding for the Plan will be facilitated through establishment of a trust fund operating under the guidelines of Internal Revenue Code, Section 115, in compliance with accepted government accounting standards. Plan funding, upon completion of the

aforementioned collective bargaining agreements, will be sourced at least in part from employer contributions that would otherwise have been allocated to the pension plan, had it not been for the benefit reductions.

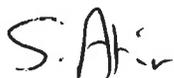
Section 115 Trust Agreement

The recommended Trust complies with Section 115 of the Internal Revenue Code and can be used to finance the County's obligations under the Plan. The Trust will be created as a tax-exempt trust in accordance with California law, with the primary objective of funding the County's responsibilities under the Plan. The Trust Agreement specifies that an oversight committee be appointed by your Board, consisting of the same members stated in the Plan document.

To benefit from our existing relationship with Principal as the trustee for the County's Supplemental Retirement Plan, it is recommended that your Board appoint Principal as the trustee for the newly established 115 Trust, and authorize the Director-Human Resources to sign the Section 115 Trust Agreement

This letter has been reviewed by the County Executive Office, County Counsel, and the Auditor-Controller's Office. If you have any questions regarding this item, please contact me at (805) 654-2561, or Patti Dowdy, Employee Benefits Manager, at (805) 648-9218.

Respectfully submitted,



Shawn Atin
Assistant County Executive Officer/Human Resources Director



Sevet Johnson, PsyD
County Executive Officer

c: Jeffery S. Burgh, Auditor-Controller
Tiffany N. North, County Counsel
Mike Pettit, Assistant County Executive Officer
Kaye Mand, Assistant County Executive Officer/Chief Financial Officer

Attachments:

- Exhibit 1 – Resolution of the Board of Retirement of Ventura County Employees' Retirement Association (April 17, 2023)

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- Exhibit 2 – County of Ventura Retiree Medical Expense Reimbursement Plan Document
- Exhibit 3 – County of Ventura Section 115 Trust Agreement