



Region IX
50 United Nations Plaza
San Francisco, CA 94102

JUN 16 1992

Gregory Brummels, Chief
Bureau of County Cost Plans
Property Tax Audits Division
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250-5876

Dear Mr. Brummels:

I have attached a copy of the Settlement Agreement between my office, Sacramento County and Orange County regarding pension reserves of certain California counties.

As part of your responsibility for approval of County-wide cost allocation plans, the Division of County Cost Plans should use the principles on the attachment when you review county pension costs. Specifically, you should note that all pension reserves, including special reserves, must be actuarially supported and justified by an independent actuary to be allowable. In addition, the Counties are to implement these principles for their special reserves in their next actuarial cycle.

If you have any questions in this regard please call me or Robert Klein of my office.

Sincerely,

David S. Low
Director
Division of Cost Allocation

cc: Robert Kimoto
OIG-Sacramento

REQUEST FOR RECONSIDERATION
UNDER 45 C.F.R. PART 75 OF
DIVISION OF COST ALLOCATION
FINAL DETERMINATION

SETTLEMENT AGREEMENT

PARTIES

The parties to this Settlement Agreement are the Division of Cost Allocation ("DCA") of the U.S. Department of Health and Human Services ("HHS"), Region IX, San Francisco, California, and the California counties of Alameda, Contra Costa, Fresno, Kern, Los Angeles, Mendocino, Merced, Orange, Sacramento, San Bernardino, San Joaquin, San Mateo, Sonoma, Stanislaus, Tulare, and Ventura ("the Counties").

BACKGROUND

A Final Determination ("Determination") was made by DCA on 27 September 1991 which required that three enumerated actions be taken by the all of the counties that were the subject of that Determination. The Determination was based on an Audit Report done by the Office of the Inspector General titled "Audit of the Excess Reserves of the Pension Trust Funds of 22 California Counties." Subsequently the Counties elected to apply jointly for Reconsideration of the Determination under the provisions of 4 C.F.R. Part 75, and designated Nancy Wolford, Auditor-Controller of Sacramento County, as their duly authorized representative for that purpose. An Application for Reconsideration of the Final Determination ("Application") was filed by the Counties on January 29, 1992. (Santa Barbara was erroneously designated as one of the Counties seeking a reconsideration in the January 29, 1992 Application.) The joint Application filed on behalf of the Counties was limited to the Reserve for Deficiencies maintained by the various County Pension Trust Funds pursuant to California Government Code sections 31592 and 31592.2. Orange County filed its own Application concerning its Reserves for Self-Insurance and for Undistributed Earnings.

A meeting was held at 50 United Nations Plaza, San Francisco, California on April 9, 1992 pursuant to the provisions of 45 C.F.R. Part 75. The Regional Director of Region IX designated Bernard Kelly, Regional Director of Region X, to act in his stead as decision-maker, and none of the parties objected to that designation. Ms. Wolford was present at the meeting with counsel, Mr. John Whisenhunt, as were representatives of DCA and HHS's Office of General Counsel. In addition, Mr. Chuck Hulse and Mr. Don Rubin were present on behalf of Orange County. (Orange County

agreed to be represented by Ms. Wolford in connection with the statutory Reserve for Deficiencies; it appeared individually in connection with its Application for Reconsideration of the DCA Determination pertaining to its Reserve for Self-Insurance, and its Reserve for Undistributed Earnings.)

Subsequent to the meeting the parties have agreed to settle this matter in conformity with the principles enunciated below. This Settlement Agreement is entered into by Ms. Nancy Wolford, who warrants that she is acting as the duly authorized representative of all of the Counties, and that she has been given the authority by them to settle this matter on their behalf in accordance with the terms of this Settlement Agreement, and to bind them to the terms hereof. Orange County has independently concurred in this Settlement Agreement as to all issues upon which it sought Reconsideration.

PRINCIPLES

1. Federal cost principles will not allow reimbursement of increases in employer contributions to County Pension Trust Funds resulting from maintenance of special reserves (such as the statutory Reserve for Deficiencies) which are not supported and justified actuarially, and which are maintained separately from the ordinary reserves of the Pension Trust Fund. Maintenance of such actuarially unsupported and unjustified reserves would require the use of a dual employer contribution rate structure or other means to ensure that Federal programs are not overcharged. However, actuarially supported and justified special reserves may be maintained.

2. For a special reserve to be considered actuarially supported and justified, the independent actuary for the County Pension Trust Fund must provide explicit details in the report on the County Pension Trust Fund as to the actuarial need for the special reserve and the amount of funds and source of funds for the special reserve. Such special reserves may generate their own actuarial gains and losses. The sample of an actuarial justification provided to Sacramento County by W. F. Corroon Co. in their letter of April 30, 1992, represents acceptable language to meet these criteria, except that the word "contingency" should be deleted each place that it appears in the letter. It is emphasized that a separate actuarial justification is required for each special reserve maintained, and that the justification must relate specifically to the need for the subject special reserve.

3. This actuarial justification will be required during the next regular actuarial cycle for each of the Counties and will become part of the scope of the actuarial review as long as such reserves are maintained.

4. The actuarial reports supporting these reserves will be made available to Federal officials as needed for review. If the actuarial reports support and justify the special reserves, based on these Principles (i.e., paragraphs 1 through 4 hereof) generally accepted actuarial standards, and all other applicable statutory and regulatory criteria are satisfied, the actuarially supported and justified special reserves may be maintained. In entering into this Settlement Agreement, the DCA specifically recognizes and acknowledges that reserves satisfying the standards set forth in these Principles are allowable costs within the meaning of Office of Management and Budget Circular A-87 ("Circular A-87") and do not constitute contributions to a contingency reserve within the meaning of Circular A-87.

5. Sacramento County will head a County task force which will examine the need for maintaining the Reserve for Deficiencies required by the 1937 Statute and will make appropriate recommendations to the State to effect appropriate changes.

6. Upon execution of this Settlement Agreement by all parties, the counties' Requests for Reconsideration shall be deemed withdrawn.

7. Upon execution by all of the parties, this Settlement Agreement supersedes the DCA Final Determination.

For the Counties:

Nancy E. Wolford DATE: 5/19/92
Nancy E. Wolford
Auditor-Controller
County of Sacramento

For the Division of Cost Allocation:

David S. Low DATE: 5/18/92
David S. Low
Director
Division of Cost Allocation

For Orange County:

Ernie Schneider DATE: 6/2/92
Ernie Schneider
County Administrative Officer
County of Orange



Mr. Donald E. Etzler, Chief
Bureau of County Cost Plans
Division of Local Government Fiscal Affairs
P.O. Box 942850
Sacramento, CA. 94250-5876

Region IX
50 United Nations Plaza
San Francisco, CA 94102

APR 19 1991

Dear Mr. Etzler:

In order to resolve the findings under the April 3, 1991 HHS OIG Audit Report A-09-90-00073 titled "Audit of the Excess Reserves of the Pension Trust Funds of 22 California Counties", each county cited in the report should be required to certify to your office that they will comply with the following:

1. Reserves identified in the audit report for (1) deficiencies, (2) undistributed earnings, (3) self-insurance and (4) supplemental benefits must be included in the Pension Trust Fund actuarial assets used to calculate pension costs claimed under Federal programs. The inclusion of these reserves must be accomplished in the next regular pension rate setting cycle, but not later than the cycle used to set rates for the Fiscal Year Ending June 30, 1993.
2. Upon completion of the pension rate setting process, each county will provide to your office (1) a certification that the subject reserves were included in the actuarial assets used to calculate pension costs and (2) an accounting of any changes in the amount of the reserve balances reported in the audit report.
3. The counties must certify that they will maintain current actuarial or other studies to support reserves established for specific benefits, including (1) reserves for self insurance and (2) reserves for supplemental benefits.

Please inform Bob Klein, of my office, when the certifications are received from all of the subject counties. If you have any questions, please call me or Bob Klein at (415)-556-1704.

Sincerely,

David S. Low
Director

Attachment

CC: Bill Fernandez, OIG
Bob Kimoto, OIG

CERTIFICATION OF ACTUARIAL ASSUMPTIONS
ON EXCESS RESERVES OF THE PENSION TRUST FUNDS

I hereby certify, as the responsible official of _____ County, that:

- (1) reserves for deficiencies, undistributed earnings, self-insurance and supplemental benefits are included in the Pension Trust Fund actuarial assets used to calculate pension cost claimed under Federal Programs.
- (2) an accounting of any changes in the amount of the reserve balances be reported in the Annual Audit Report.
- (3) that current actuarial or other studies be available for inspection or review to support the reserves established for specific benefits, including (a) reserves for self insurance and (2) reserves for supplemental benefits.