**ITEM 13**

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SCERS
SACRAMENTO COUNTY
EMPLOYEES' RETIREMENT SYSTEM

**For Agenda of:**
September 21, 2016

September 16, 2016

**TO**: President and Members
Board of Retirement

**FROM**: Richard Stensrud
Chief Executive Officer

**SUBJECT**: Remediation Plan for Mission Oaks Member Enrollment Errors

**Recommendation:**

**That your Board approve the elements of the proposed remediation plan for member enrollment errors at the Mission Oaks Recreation and Park District.**

Earlier this year, the Mission Oaks Recreation and Parks District (Mission Oaks) advised SCERS that in the course of conducting its annual external audit, the auditor had identified several instances where Mission Oaks had failed to enroll employees in SCERS that should have become SCERS members under the rules under which Mission Oaks operates. Since that time, SCERS Staff has been working with Mission Oaks to assess the scope of and develop a plan to remedy the problem.

The failure to properly enroll an eligible employee in SCERS means that the employee has not obtained the SCERS service credit he/she should have received. It also means that SCERS did not receive the employer and employee contributions that should have been submitted for that service. Because SCERS operates as a tax qualified retirement plan, the question of how to address such situations is largely controlled by federal tax law. The Internal Revenue Service (IRS) views problems like this as an operational failure to follow the terms of the retirement plan, and the errors must be corrected in accordance with IRS rules and procedures in order to reduce the risk of the IRS challenging the plan's qualified status in a potential IRS audit. Accordingly, Staff has sought and obtained guidance from tax counsel on the remedial measures that will be required and/or permitted under federal tax law.

This memorandum will outline the elements of the proposed remediation plan. The actual 'plan document' will be presented for your Board's consideration and approval at the Board Meeting.

**Background:**

Mission Oaks is a participating employer in SCERS by virtue of its status as a 'dependent district' with respect to Sacramento County (County). Under the operating agreement between Mission Oaks and the County, Mission Oaks' permanent full-time and 'regular part time' employees – defined as employees who work at least 38 hours bi-weekly – are required to be enrolled as SCERS members. Mission Oaks' auditor noted that several current employees met the eligibility criteria but had not been enrolled in SCERS. In communicating this information to SCERS, Mission Oaks acknowledged that the failure to enroll regular part time employees in SCERS likely reached back to the early 2000s, and possibly further. Mission Oaks took responsibility for not recognizing its duty to enroll the relevant employees in SCERS and expressed its willingness to assist in establishing the full scope of the problem and its commitment to fixing it.

The basic federal tax law rule for addressing such an operational failure is that it must be fully corrected with respect to all members and beneficiaries, and for all taxable years. In other words, the correction should restore the plan to the position it would have been in had the error not occurred, including restoration of the benefits and rights of any current and former participants and beneficiaries as if the error had not occurred, and the receipt by the plan of all funding (contributions and accrued interest) that should have been provided or obtained.

Given the tax law requirement that both the plan and the impacted employees must be 'made whole,' SCERS Staff has worked with Mission Oaks to identify the employees who should have become SCERS members; when the membership should have started; the salary experience for those employees; the service credit they should have accrued; and the employer and employee contributions, and accrued interest, that SCERS should have received.

That analysis has been partly completed but additional audit work will need to be performed to assure that all impacted employees are identified (including past employees) and all the relevant information is incorporated in the determination of the pension liability and cost to establish the missing service credit for those employees. That information will be provided to your Board when the analysis is finalized.

The proposed remediation plan is not dependent on having a finalized analysis of the Mission Oaks information. Rather, it represents the proposed approach for dealing with the various issues raised by the facts and circumstances surrounding the operating error.

Approving the remediation plan now will allow those issues to be dealt with in a timely manner, and speed up resolution of the Mission Oaks situation. That said, for the reasons noted in the discussion that follows, it may be necessary to revisit the remediation plan and/or the process through which that plan is implemented when the analysis is completed regarding the member enrollment practices of other participating employers.

**Discussion:**

The proposed remediation plan is designed to achieve the dual goals of making the plan and the employees whole. Under federal tax law, the ultimate responsibility for the funding necessary to meet these goals rests with the employer (i.e., Mission Oaks) because it was their error that led to the operational failure. Within certain legal limits, however, the employer may seek to obtain funding from the employees to help redress the operating error.

In this case, Mission Oaks will provide the funding for the vast majority of the additional pension liability and associated cost related to the operating error. Mission Oaks has elected, however, to ask the current employees who should have become SCERS members provide the missing employee contribution component for the service credit they accrued in the 36 months prior to when they will begin making regular, ongoing contributions as SCERS members. The regular, ongoing contributions will start this month (September, 2016), meaning that the employees will be responsible for providing the employee contributions for the service they earned from September 2013 to September 2016. Mission Oaks will provide both the employer and employee contributions, plus the necessary interest, for any service credit accrued by these current employees prior to September 2013.

Former employees who should have become SCERS members will not have to make any employee contributions for the service they accrued prior to terminating employment with Mission Oaks. Mission Oaks will provide both the employer and employee contributions, plus necessary interest, for those former employees.

Originally, it was contemplated that under the remediation plan the impacted employees would have the option of paying the 36 month employee contribution component either in a lump sum, via a multi-month payroll deduction payment plan, or through a combination of lump sum payment and a payroll deduction plan. To that end, SCERS provided each of the impacted employees with an individualized statement of his/her salary experience, service credit, and the employee contributions and accrued interest owed for the 36 month period. The employees were also provided with information regarding what the cost would be under the various payment options, including shorter or longer payroll deduction plans.

It has been determined, however, that this element of the remediation plan will have limited application because it appears that all but one of the current employees who should have been enrolled as SCERS members was enrolled (improperly) in a contributory retirement plan called PARS. The participation in PARS by these employees is important because the contributions made by the employees to PARS provides a funding source for the 36 month contribution component owed to SCERS. SCERS' tax counsel and PARS have agreed that the enrollment of the employees in PARS was improper since they should have been enrolled in SCERS, and that the improper enrollment can be remedied, in part, by a 'trustee-to-trustee' transfer of funds in PARS to SCERS.

It should be noted, however, that: (1) It appears the contributions made by the employees to PARS exceed the contributions that must be provided to SCERS for the 36 month period; and (2) SCERS is only permitted to receive the funds necessary to cover the missing contributions for the 36 month period. Accordingly, PARS and the impacted employees will be responsible for determining how to distribute, and the tax ramifications of any distribution, of any PARS funds in excess of the funding required to meet the 36 month SCERS contribution component. Please further note that because the enrollment in and contributions made to PARS are deemed to have been improper, PARS is required to disgorge the funds one way or the other. Thus, while it does not appear that Mission Oaks has the authority to 'require' that the employees use the PARS funds to address the 36 month employee contribution component in SCERS, it is advantageous for the employees to do so since a trustee-to-trustee transfer from PARS to SCERS will not be a taxable event, in contrast to another form of distribution from PARS which will likely have tax consequences.

The one employee referenced above, who should have been enrolled in SCERS and was <u>not</u> enrolled in PARS, will be able to utilize one of the alternative payment methods (i.e., lump sum, payroll deduction or combination of lump sum and payroll deduction) to address the 36 month contribution component.

For any other current employees that are subsequently identified as employees that should have been enrolled as a SCERS member, the 36 month contribution component will be addressed either with PARS funds or through one of the alternative payment methods.

Please note, however, that as suggested above, while Mission Oaks can elect to have employees fund the 36 month contribution component, neither Mission Oaks or SCERS has the authority to <u>compel</u> an employee to provide funding for the 36 month contribution component. While there is a cost to the employee providing the funding, there is clearly value to the employee in doing so, in that it will give him/her more SCERS service and ultimately, a bigger SCERS benefit. Viewed purely from a cost/benefit perspective, the benefit outweighs the cost. This is particularly true for employees who utilize their PARS funds to address the cost, as by so doing they also avoid immediate taxation on those funds. It is expected, therefore, that all the impacted employees will take advantage of the opportunity to have the 36 months of SCERS service added to their SCERS service. If an employee chooses not to provide funding for the 36 month contribution component, however, under the proposed remediation plan the employee will <u>not</u> receive the SCERS service credit they would have otherwise accrued in that period.

There is another option to not providing the SCERS service credit for the 36 month period if an employee refuses to provide the necessary funds. That option is grounded in the fact that Mission Oaks has the ultimate responsibility to make the plan and the employee whole. Accordingly, the alternative approach would be to require that Mission Oaks pay for the SCERS service credit for the 36 month period for any employee who refuses to provide the necessary funds.

This approach is <u>not</u> being recommended for the proposed remediation plan for the following reasons: (1) It would result in employees who refuse to fund the 36 month contribution component being treated more favorably than employees who choose to provide the funding; (2) The inequitable outcome could prompt more (or all) employees to refuse to provide the funding, even if doing so would have negative tax consequences; (3) This would undermine the decision by Mission Oaks to have employees share in the cost attributable to the most recent work period; and (4) The result would be that Mission Oaks has to pay more than the substantial cost they will already be bearing.

Overall, the recommended approach for the proposed remediation plan (i.e., the employee does not get the SCERS service credit for the 36 month period if he/she refuses to provide the necessary funding) seeks to balance the equities, taking into account the facts and circumstances of the situation. That said, if your Board believes that the alternate approach (i.e., Mission Oaks pays for the SCERS service credit for the 36 month period for any employee who refuses to provide the necessary funds) yields a better outcome, it can be utilized in the remediation plan.

In making this assessment, an additional consideration should be noted.

The two primary procedures under federal tax law for addressing and correcting operational errors are the Employee Plans Compliance Resolution System (EPCRS) and the Voluntary Compliance Plan (VCP) process. Under EPCRS, SCERS can correct an operational error without pre-approval by the IRS if the operational failure is insignificant, given all the facts and circumstances (e.g., number of members impacted relative to total membership, assets impacted relative to total assets), and the measures taken are reasonable and appropriate to the operational failure. There is no fee for pursuing a remedy via EPCRS. The VCP process is typically utilized for larger, more material errors and/or when the proposed remedial measures are outside the norm. The VCP process requires that the proposed remedial plan be submitted to the IRS for approval. There is a fee for obtaining VCP approval.

Tax counsel has advised that based on the facts and circumstances, the Mission Oaks operational failure qualifies as an insignificant operational error that can be corrected under EPCRS. Tax counsel has cautioned, however, that this assessment may need to be revisited when the analysis of the enrollment practices of <u>other</u> participating employers is completed as operational errors must be insignificant in aggregate.

EPCRS is grounded in the central premise noted at the outset, i.e., any correction method should restore the plan and its participants to the position it/they would be in if the error had not occurred. A deficiency in EPCRS, however, is that it has almost exclusively been used to address operational errors in defined contribution plans and not in defined benefit plans. Accordingly, certain 'default' corrective practices under EPCRS do not fully take into account how defined benefit plans operate, with the result that those default corrective practices can yield outcomes that produce questionable or inequitable results when applied to defined benefit plans. Fortunately, however, EPCRS does not preclude alternative corrective methods so long as they are 'reasonable and appropriate' in the circumstances and produce results that are not inconsistent with the central premise.

It is contemplated that implementation of the proposed remediation plan, at least at this juncture, will take place under EPCRS, and hence the considerations noted above will need to be taken into account.

One area where those considerations are relevant is Mission Oak's desire to have employees provide the funding for the immediately preceding 36 month period of employee contributions to SCERS. Related to this is the question of the appropriate outcome if an employee refuses to provide the necessary funding.

In the current situation, tax counsel has advised that the broader issue of whether Mission Oaks can request employees to fund the 36 month contribution component is largely rendered moot by the availability of and action that will need to be taken with the PARS funds. Tax counsel has also acknowledged that the default correction method under EPCRS if an employee refuses to provide the necessary funding (i.e., Mission Oaks would have to pay) produces a windfall for that employee and inequity for those who do provide the funding. Accordingly, tax counsel has advised that a reasonable argument can be made that the alternate correction outcome (i.e., the employee does not get the service credit if he/she does not provide the funding) is 'reasonable and appropriate' under the circumstances and thus permissible under EPCRS. That does not guarantee that if the IRS reviews the remedy it will agree that it is reasonable and appropriate under EPCRS. However, the fact that there are legitimate reasons to support why the remedy was selected would substantially diminish any potential sanction for deviation from EPCRS.

Given these factors, and the additional arguments presented previously, it is recommended that if an employee refuses to provide funding for the 36 month contribution component, under the proposed remediation plan the employee will not receive SCERS service credit for that period.

A second area impacted by the interaction between EPCRS and additional considerations of law and equity is the issue of the appropriate outcome if at some future point an employee who was not properly enrolled as a SCERS member should terminate employment with Mission Oaks and wish to withdraw his/her contributions. Specifically, the question is whether that employee can withdraw only what he/she contributed (via PARS, a payment plan, or in regular, ongoing contributions) or whether the employee can also take the employee contributions made by Mission Oaks on the employee's behalf for service prior to September 2013.

Similar to the discussion above, the default correction under EPCRS would appear to call for the employer-made employee contributions to be refunded to a withdrawing employee. The windfall to the employee and the inequity to the employer from that result are self-evident. Accordingly, the recommended approach under the proposed remediation plan is that: (1) The refund of contributions will be limited to the contributions actually made by the employee; (2) The service credit related to those refunded contributions will be removed; but (3) The service credit related to any period where the employer made the employee contributions will remain in the employee's account; and (4) When age eligible for retirement, the employee can file for and receive a benefit based on the remaining service and compensation history.

The rationale for the utilizing this approach under the proposed remediation plan is that the alternate correction is reasonable and appropriate under EPCRS given the facts and circumstances. Additional support for this argument is provided by the fact that the 1937 Act contains provisions that specifically address whether employee contributions made by the employer can be refunded to the employee upon termination and withdrawal of service, and that the County has adopted the provisions that exclude the employer-made employee contributions from such a refund. Tax counsel has advised that this constitutes a reasonable and defensible argument for the alternate correction method and outcome. Again, that does not guarantee that if the IRS reviews the remedy it will agree that it is reasonable and appropriate under EPCRS, however, the fact that there are legitimate reasons to support why the remedy was selected would substantially diminish any potential sanction for deviation from EPCRS.

Accordingly, it is recommended that the described approach be utilized in the proposed remediation plan.

With respect to potential challenges by Mission Oaks or a Mission Oaks employee to the application of any aspect of the remediation plan, it is recommended that the remediation plan provide for the following: (1) Any challenge to the application of the remediation plan must be presented to the SCERS Board for consideration and final determination before a remedy can be pursued in any other forum; and (2) If presented with such a challenge, or on its own initiative, the SCERS Board can submit a request for a ruling by the IRS on the permissibility of an element of the remediation plan via the VCP process or other available avenue. In such a case, action on the challenge or the element of the remediation plan will be deferred until a final ruling is obtained from the IRS.

It is anticipated that there will be former Mission Oaks employees who should have been enrolled as SCERS members prior to terminating employment with Mission Oaks, and who therefore should have accrued service in SCERS. As previously noted, both the employer and employee contributions for that service, plus appropriate interest, will be provided by Mission Oaks. Recommended elements of the remediation plan necessary to address such former employees will be presented for consideration by your Board when the information regarding those former employees is fully developed via upcoming audit activity.

Finally, it is recommended that the remediation plan include discussion of how Mission Oaks will address the cost associated with adding the missing service credit for employees who were not enrolled as SCERS members in a timely manner.

As your Board knows, in cases where liability has been added to the plan through action or inaction by the employer, the employer can address the cost of that additional liability through either an upfront payment, paying down it down over an amortization period as unfunded liability, or through some combination of these approaches. The decision of how it will be addressed rests with your Board, taking into account the facts and circumstances, and the provisions of SCERS Funding Policy.

Based on discussions with Mission Oaks, it is Staff's understanding and belief that Mission Oaks wishes to address a substantial component of the current cost associated with the missing SCERS service credit via an initial lump sum payment. Any remaining cost, whether it is current cost not covered by the lump sum payment, cost related to information developed in subsequent audit activity, or additional cost due to an increase in the liability because of assumption changes or assumption shortfalls, would need to be addressed as unfunded actuarial accrued liability (UAAL) and paid over a prescribed amortization schedule.

As previously noted, final numbers regarding such matters will be provided when the audit analysis is completed. At that time your Board can determine the manner in which you wish to see the cost addressed.

I hope this information is helpful. Staff will be happy to answer any questions you might have.

Respectfully,

Richard Stensrud
Chief Executive Officer

# MISSION OAKS RECREATION AND PARK DISTRICT

## MEMBER ENROLLMENT REMEDIATION PLAN

The following remediation measures will be utilized in addressing the issues related to the member enrollment errors at the Mission Oaks Recreation and Park District (Mission Oaks).

SCERS reserves the right to modify the provisions of this remediation plan.

**Description of Error:**

Mission Oaks is a participating employer in SCERS by virtue of its status as a ‘dependent district’ with respect to Sacramento County (County). Under the operating agreement between Mission Oaks and the County, Mission Oaks’ permanent full-time and ‘regular part time’ employees – defined as employees who work at least 38 hours bi-weekly – are required to be enrolled as SCERS members. Mission Oaks advised SCERS that in the course of conducting its annual external audit, the auditor identified several instances where Mission Oaks had failed to enroll employees in SCERS that should have become SCERS members. Mission Oaks has acknowledged that the failure to enroll regular part time employees in SCERS likely reached back to the early 2000s, and possibly further, and has taken responsibility for not recognizing its duty to enroll the relevant employees in SCERS.

The failure to properly enroll an eligible employee in SCERS means that the employee has not obtained the SCERS service credit he/she should have received. It also means that SCERS did not receive the employer and employee contributions that should have been submitted for that service. Because SCERS operates as a tax qualified retirement plan, the question of how to address such situations is largely controlled by federal tax law. The Internal Revenue Service (IRS) characterizes problems like this as an operational failure to follow the terms of the retirement plan, and the errors must be corrected in accordance with IRS rules and procedures.

The basic federal tax law rule for addressing such an operational failure is that it must be fully corrected with respect to all members and beneficiaries, and for all taxable years. In other words, the correction should restore the plan to the position it would have been in had the error not occurred, including restoration of the benefits and rights of any current and former participants and beneficiaries as if the error had not occurred, and the receipt by the plan of all funding (contributions and accrued interest) that should have been provided or obtained.

Given the tax law requirement that both SCERS and the impacted employees must be 'made whole,' SCERS Staff has worked with Mission Oaks to identify the employees who should have become SCERS members; when the membership should have started; the salary experience for those employees; the service credit they should have accrued; and the employer and employee contributions, and accrued interest, that SCERS should have received. That analysis has been partly completed but additional audit work will need to be performed to assure that all impacted employees are identified (including past employees) and all the relevant information is incorporated in the determination of the pension liability and cost to establish the missing service credit for those employees.

Under federal tax law, the ultimate responsibility for the funding necessary to meet the goals of making the plan and the employees whole rests with the employer (i.e., Mission Oaks) because it was their error that led to the operational failure. Within certain legal limits, however, the employer may seek to obtain funding from the employees to help redress the operating error.

**Remediation Elements:**

Current and former employees who should have been enrolled in SCERS will be placed into the appropriate SCERS membership tier based upon the date their SCERS membership should have commenced.

Mission Oaks will provide the funding for the vast majority of the additional pension liability and associated cost related to the operating error.

Mission Oaks has elected to ask the current employees who should have become SCERS members to provide the missing employee contribution component for the service credit they accrued in the 36 months prior to when they will begin making regular, ongoing contributions as SCERS members.

The regular, ongoing contributions will start in September, 2016. Current employees will be responsible for providing the employee contributions for the service they earned from September 2013 to September 2016, plus necessary interest.

Mission Oaks will provide both the employer and employee contributions, plus the necessary interest, for any service credit accrued by these current employees prior to September 2013.

Former employees who should have become SCERS members will not have to make any employee contributions for the service they accrued prior to terminating employment with Mission Oaks. Mission Oaks will provide both the employer and employee contributions, plus necessary interest, for those former employees.

Analysis to-date indicates that virtually all of the current employees who should have been enrolled as SCERS members were enrolled in a contributory retirement plan called PARS. The contributions made by the employees to PARS provides a funding source for the 36 month contribution component owed to SCERS since the enrollment of the employees in PARS was improper because they should have been enrolled in SCERS. Under federal tax law the improper enrollment can be remedied, in part, by a 'trustee-to-trustee' transfer of funds in PARS to SCERS.

SCERS is only permitted to receive the funds from PARS necessary to cover the missing contributions that should have been paid to SCERS for the 36 month period. If the contributions made by the employees to PARS exceed the contributions that must be provided to SCERS for the 36 month period, PARS and the impacted employees will be responsible for determining how to distribute, and the tax ramifications of any distribution, of any PARS funds in excess of the funding required to meet the 36 month SCERS contribution component.

Any impacted employees who do not participate in PARS, or for whom the contributions in PARS are not sufficient to meet the 36 month SCERS contribution requirement, will have the option of paying the 36 month employee contribution component either in a lump sum, via a multi-month payroll deduction payment plan, or through a combination of lump sum payment and a payroll deduction plan. SCERS will provide each of the impacted employees in this category with an individualized statement of his/her salary experience, service credit, and the employee contributions and accrued interest owed for the 36 month period. The employees will also be provided with information regarding what the cost would be under the various payment options, including shorter or longer payroll deduction plans.

While Mission Oaks can elect to have employees fund the 36 month contribution component, beyond the mandatory distribution by PARS to SCERS due to the enrollment error, neither Mission Oaks or SCERS has the authority to compel an employee to provide funding for the 36 month contribution component. However, if an employee chooses not to provide funding for any part of the 36 month contribution component, the employee will <u>not</u> receive the SCERS service credit they would have otherwise accrued in that period.

If at some future point an employee who was not properly enrolled as a SCERS member should terminate employment with Mission Oaks and wish to withdraw his/her contributions: (1) The refund of contributions will be limited to the contributions actually made by the employee (including funds transferred from PARS); (2) The service credit related to those refunded contributions will be removed; but (3) The service credit related to any period where Mission Oaks made the employee contributions will remain in the employee's account at SCERS; and (4) When age eligible for retirement, the employee can file for and receive a benefit from SCERS based on the remaining service and compensation history.

Provisions governing the treatment of former Mission Oaks employees who should have been enrolled as SCERS members prior to terminating employment with Mission Oaks, and who therefore should have accrued service in SCERS, consistent with federal tax law will developed and added to the remediation plan.

**Compliance Procedure:**

The two primary procedures under federal tax law for addressing and correcting operational errors are the Employee Plans Compliance Resolution System (EPCRS) and the Voluntary Compliance Plan (VCP) process.

Under EPCRS, an operational error can be corrected without pre-approval by the IRS if the operational failure is insignificant, given all the facts and circumstances (e.g., number of members impacted relative to total membership, assets impacted relative to total assets), and the measures taken are reasonable and appropriate to the operational failure. There is no fee for pursuing a remedy via EPCRS.

The VCP process is typically utilized for larger, more material errors and/or when the proposed remedial measures are outside the norm. The VCP process requires that the proposed remedial plan be submitted to the IRS for approval. There is a fee for obtaining VCP approval.

Based on the facts and circumstances known at this time, the Mission Oaks operational failure qualifies as an insignificant operational error that can be corrected under EPCRS. However, because operational errors must be insignificant in the aggregate to qualify for correction under EPCRS, that assessment may need to be revisited when the analysis of the enrollment practices of other participating employers is completed.

If it is subsequently determined that correction cannot be obtained via the EPCRS process, correction may need to be obtained via the VCP process. If it is determined that correction must be pursued via the VCP process, the cost of obtaining such a determination from the IRS will be borne pro rata by the employer or employers where the operational failure occurred. The decision to pursue correction via either EPCRS or the VCP process rests solely with SCERS.

**Appeal of Application of the Remediation Plan:**

If Mission Oaks or a Mission Oaks employee wishes to challenge the application of any aspect of the remediation plan: (1) Any challenge to the application of the remediation plan must be presented to the SCERS Board for consideration and final determination before a remedy can be pursued in any other forum; and (2) If presented with such a challenge, or on its own initiative, the SCERS Board can submit a request for a ruling by the IRS on the permissibility of an element of the remediation plan via the VCP process or other available avenue. In such a case, action on the challenge or the element of the remediation plan will be deferred until a final ruling is obtained from the IRS.

**Addressing Employer Cost Due to the Operational Failure:**

The cost of the additional plan liability resulting from an operational failure can be addressed by the employer through either an upfront payment, paying the cost over an amortization period as unfunded liability, or through some combination of these approaches. The decision of how it will be addressed rests solely with the SCERS Board, taking into account the facts and circumstances, and the provisions of the SCERS Funding Policy.

SCERS reserves the right, in its sole discretion, to require an employer to bear the proportionate cost of any expenses that are reasonable and necessary to determining the existence and scope of an operational failure, or developing and implementing a remediation plan to address an operational failure, including but not limited to audit, actuarial, or legal analysis, performed by either SCERS Staff or outside service providers, or determinations made by the IRS.