

SBCERA Resolution No. 2020-6

**IMPLEMENTATION OF CORRECTIVE DISTRIBUTIONS
REQUIRED BY THE ALAMEDA DECISION**

WHEREAS, the San Bernardino County Employees' Retirement Association (SBCERA) Board of Retirement (BOARD) is required by Government Code sections 31461 and 31542, as well as BOARD Benefits Policy No. 26, *Compensation Earnable and Pensionable Compensation*, to determine *compensation earnable* for Tier 1 members.

WHEREAS, on July 30, 2020, the California Supreme Court filed its decision in *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.*, Cal. Supreme Court Case No. S247095 (review granted March 28, 2018) ("*Alameda*") (the "*Alameda Decision*").

WHEREAS, on August 6, 2020, the Board adopted Resolution 2020-5, complying with the *Alameda Decision's* directives regarding the Board's lack of authority to include in-kind benefits in Compensation Earnable ("*Alameda Exclusions*"), and applied that directive to all retiree payroll for individuals who are legacy members who retired on or after July 30, 2020.

WHEREAS, in Resolution 2020-5, the Board also directed the refund of active member contributions that were made on pay codes for the *Alameda Exclusions* prior to July 30, 2020 to SBCERA members who did not retire before that date and who therefore will not have the *Alameda Exclusions* included in the calculation of their retirement allowances from SBCERA.

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WHEREAS, in Resolution 2020-5, the Board further complied with the *Alameda* decision's directives regarding mandatorily excluded pay items required by amendments to Government Code section 31461, effective January 1, 2013 ("PEPRA Exclusions"), and applied that directive to all retiree payroll for individuals who retired on or after January 1, 2013. Effective with the August 2020 payroll, SBCERA will recalculate and adjust amounts paid to such retirees if their retirement allowances previously included the PEPRA Exclusions.

WHEREAS, as used herein, the term "PEPRA Exclusions" shall refer to any payments that are not permitted by subdivision (b)(2), (3) or (4) of Government Code section 31461 to be included in "compensation earnable," including, among other items, payments received by the member for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise. For clarification, to the extent a particular payment is permitted to be included in compensation earnable under section 31461 so long as the timing of the payment did not result in prohibited overpayments (e.g., "straddling" of years for leave cash outs, which is a "PEPRA Exclusion"), contributions will continue to be taken, and will not be refunded, on those leave cash outs because they properly contribute to the payment of the member's future SBCERA retirement allowance's inclusion of leave cash outs in an amount that does not exceed that which may be earned and payable in each 12-month period during the final average compensation period, regardless of when reported and paid.

WHEREAS, this Resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time and the regulations issued thereunder (the "Code") as applicable.

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THEREFORE BE IT RESOLVED, that effective as of September 3, 2020, the foregoing recitals are incorporated herein by this reference, and the following actions are authorized by the BOARD and required of SBCERA:

1) Unless so directed by the Internal Revenue Service or a court of competent jurisdiction, no recoupment shall be made directly from retirees for any overpaid amounts as a result of the PEPRA Exclusions having been included in the calculation of a retiree's retirement benefit prior to the *Alameda* decision.

2) Staff shall make a corrective distribution (including any applicable earnings in accordance with federal tax rules) on the overpaid contributions reported on PEPRA Exclusions to retirees, if such retirees were in active member service anytime from January 1, 2013 through July 30, 2020, provided the member's contributions exceed any retirement benefit payments associated with that portion of the payment that is associated with the PEPRA Exclusions. In the event no contributions associated with the PEPRA Exclusions remain for a retiree, no corrective distribution of contributions shall be made.

3) Any amounts that SBCERA is unable to collect from SBCERA's active, deferred, and retired members as a result of this corrective action shall be collected instead through participating employer payments on the unfunded actuarial liability in accordance with recommendations from SBCERA's actuary.

4) A corrective distribution (including any applicable earnings in accordance with federal tax rules) shall also be made to deferred members of contributions that they made on pay codes for the *Alameda* Exclusions prior to July 30, 2020, provided such

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members did not retire by that date and therefore will not have the *Alameda* Exclusions included in the calculation of their retirement allowances from SBCERA.

5) Regarding SBCERA active and deferred members, staff, as soon as practicable, shall implement a corrective distribution (including any applicable earnings in accordance with federal tax rules) to such members for employee contributions reported and or associated with PEPRA Exclusions while in active service from January 1, 2013 through the date of implementation of the corrective distribution.

This resolution supplements Resolution 2020-5 and supersedes any previous resolutions for employer pay codes of employee compensation to the contrary.

IN WITNESS WHEREOF, the above Resolution for SBCERA is hereby adopted by the BOARD on this 3rd day of September, 2020.

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

By: _____
Janice Rutherford, Chair

* * * * *

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, _____, Secretary to the BOARD of SBCERA, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the BOARD, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of September 3, 2020.

Deborah S. Cherney