

## **CORRECTION OF CONTRIBUTION COLLECTION ERRORS**

### **I. PURPOSE**

The intent of this policy is to establish criteria and procedures for resolving member and employer contribution collection errors in compliance with Internal Revenue Code section 401(a) and IRS correction guidance consistent with Revenue Procedure 2016-51 and amendments thereto. It is the intent of the Board of Retirement (“Board”) to fulfill its fiduciary duties to properly pay benefits pursuant to plan terms and to safeguard retirement fund assets by making every reasonable effort to correct errors in a timely manner.

This policy is designed to address substantial errors and does not apply to minor adjustments that occur during the routine administration of the retirement association and are corrected within a reasonable time. For the purposes of this policy, unless otherwise noted, the term “member” includes members of SCERA and their beneficiaries and estates. The term “employer” means the County of Sonoma and its affiliated districts, the Superior Court of California for the County of Sonoma, or Sonoma Valley Fire District as appropriate.

### **II. POLICY**

- A. Discovery, Investigation, and Correction:** Upon discovery of an error, SCERA staff shall conduct an investigation to determine the cause of the error. SCERA staff shall make necessary changes to the member account immediately in order to correct the error prospectively.
- B. Notice to Member and Employer:** SCERA staff shall alert the member and employer of the error and of the corrective action to be taken as soon as administratively practicable. The notice should provide an explanation of the error and corrective action to be taken. The notice also will provide information regarding the member’s right to appeal and the process for an appeal. Notice via First Class U.S. Mail is sufficient for service of the notice to the member.
- C. Extensive Errors:** The Board retains the right under this policy to determine, consistent with IRS guidelines, appropriate correction of errors that affect a significant number of members.
- D. Time Limitations:** SCERA will use its best efforts to fully correct all contribution collection errors in a timely and expeditious manner. Full correction includes recovery of all under-collected member contributions and refund of all

over-collected/excess member contributions plus appropriate interest (in accordance with Section II.G. of this policy) regardless of when the error was made.

- E. **Refund of Over-Collected Contributions:** To the extent possible, any refund of over-collected member contributions for members who are active employees will be made through the member's employer, if the refund is occurring in the same calendar year in which the excess contribution was made to SCERA, in order for the member's W-2 reporting to be correct. If it is identified that a member who is an active employee made excess member contributions in a calendar year other than the calendar year in which the correction will occur, then SCERA will issue to the member a corrective distribution via check or ACH (Automated Clearing House) deposit.

Refunds of excess employer contributions will be evaluated based on the year in which the error occurred and will be corrected by entering a credit on the employer's contribution account for the amount of the excess contributions and the credit will be applied against the employer's current contribution obligation, or will be reviewed with the Plan's actuary and potentially considered a contribution towards the employer's Unfunded Actuarial Accrued Liability (UAAL).

Refunds for employees who are no longer active employees will be made directly to the employee as a corrective distribution via check or ACH deposit.

- F. **Recovery of Under-Collected Contributions:**
1. For active employees, SCERA will provide the member with notice of the total amount of the under-collected contributions and accrued interest and the current rate of future interest. Future employee contributions will be adjusted so that payment of the under-collected contributions is completed within a reasonable time not to exceed the length of time the under-collection occurred. A member will not be permitted to receive any retirement benefits until the under-collected contributions have been paid in full.
  2. For members who are no longer active but have not retired, the member will be required to pay the contributions to SCERA prior to receiving any retirement benefits. The member is solely responsible for any tax ramifications of the payment. If the member withdraws his or her contributions and terminates membership in SCERA, only the actual employee contributions paid by the member while in active service plus

applicable interest will be refunded. In the event the member wishes to buy back the time by redepositing contributions, the full amount of withdrawn contributions, applicable interest, and any under-collected contributions plus applicable interest shall be paid to SCERA before the member can receive any retirement benefits.

3. For retirees who are receiving a retirement benefit, the retiree's retirement allowance may be reduced by an appropriate amount as an offset. SCERA and the Board recognize that recovery of underpaid contributions may cause undue hardship on the affected member. Therefore, the SCERA Chief Executive Officer ("CEO") is authorized to approve installment payments over a reasonable repayment period. Examples of reasonable repayment periods include, but are not limited to, the plan fiscal year or the period over which the error occurred, but in no event shall the repayment period exceed the member's actuarially expected life span. Generally, the offset to the retiree's benefit should not exceed 20% of the gross benefit.

- G. **Interest:** Interest on over-collected employee contributions will be paid by SCERA at the same rate as interest is credited to the member contribution reserve. Interest on over-collected member contributions will only accrue twice per year at the same time interest is credited to the member contribution reserve.

Interest on under-collected contributions will be assessed by SCERA at the actuarially assumed investment rate of return and credited to the member's contribution account. Interest may be waived if the member completes full repayment of the under collection within the SCERA plan fiscal year in which the error was discovered. The CEO may reduce the rate of interest assessed against the member when the under collection of employee contributions was due to the mistake or inadvertence of the member, SCERA, or the member's employer. If the error was the result of the member's employer, the employer may pay the interest due on the member's contributions, and that interest will be credited to the member's account. The interest rate assessed on the recovery of under-collected employee contributions should not be reduced if the under collection is due to fraud or intentional misconduct of the member.

- H. **Tax Compliance:** SCERA will comply with relevant tax regulation regarding withholding and reporting.

- I. **Reporting:** At least annually, the CEO will report to the Board at a regularly scheduled public meeting the amount, cause, and recovery status of any under-

collected contributions exceeding \$100. The report may be provided as part of the consent agenda. If there are no under-collected contributions exceeding \$100 the report may be provided as part of the communications section on the regular agenda.

- J. **Employer Notice:** At least annually, SCERA will send a contribution error report to the administrative office of each employer with their affected employees detailing the amount, cause, and recovery status of each error. The notice will also contain information regarding the employer's responsibility for any amounts that SCERA is unable to recover from the member.
- K. **Employer Responsibility for Shortfalls:** In the event that SCERA cannot collect underpaid contributions from the member, SCERA will notify the member's employer or former employer if the member is a deferred member. SCERA will provide the amount of the underpaid contributions and appropriate interest. SCERA will request immediate payment from the employer of the entire balance.
- L. **Due Process and Appeals:** Members shall have the right to appeal any benefit corrections and under-collection recovery determinations made by SCERA staff. Appeals will be governed by the SCERA Benefit Appeals Policy and Process and by the SCERA Administrative Hearing Rules and Procedures

### III. REVIEW

The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate.

### IV. HISTORY

The Board adopted this policy on 10/25/2018.

Reviewed and revised July 25, 2019, February 18, 2021 and January 18, 2024.