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## Tax Compliance

### POLICY NO. 031

This Policy is intended to ensure that the San Bernardino County Employees' Retirement Association ("SBCERA" or "Association") is in compliance with applicable Internal Revenue Code ("Code") and the United States Treasury Department Income Tax Regulations ("Treas. Regs.").

The rules set forth in this Policy were originally adopted under Policy Nos. 17, 18, 19, 20, 21 and 24, effective August 6, 2015. Effective August 1, 2019, the rules set forth under Policy Nos. 17, 18, 19, and 20 were combined and restated under this Policy No. 31, which was amended and restated, effective October 7, 2021.

Effective as of January 8, 2026, Policy No. 21 and the rules related to normal retirement age previously in Policy No. 24 are combined with this Policy No. 31, such that all of SBCERA's tax compliance regulations are now contained in this Policy No. 31. Furthermore, all such tax compliance regulations are now amended and restated effective January 8, 2026, to affirm and clarify SBCERA's existing practices with respect to certain tax qualification rules applicable to governmental pension plans as defined by Code § 414(d).

This policy covers SBCERA's provisions and procedures regarding the compensation limits under Code § 401(a)(17) and the California Public Employees' Pension Reform Act of 2013 ("PEPRA") and California Gov't Code § 7522.10, the annual benefit limit under Code § 415(b), the annual additions limit under Code § 415(c), the rollover rules under Code §§ 401(a)(31) and 402(c), the required minimum distributions rules under Code § 401(a)(9), distribution restrictions for return to work and separation from service under Code § 401(a), and normal retirement age under Code § 401(a).

For purposes of this Policy, any reference to the Code means the applicable Code section(s) and the underlying Treasury Regulations.

To the extent there is a conflict between the terms of this Policy and the Code or Treas. Regs., the applicable federal rules will govern.

Capitalized terms used in this Policy are defined in the Definitions section. Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply unless otherwise stated. SBCERA may establish reasonable procedures that it deems necessary or desirable for complying with the Code or for administrative purposes. Further, SBCERA may establish reasonable procedures that it deems necessary or desirable for complying with PEPRA compensation limits applicable to new members.

#### **I. INTERNAL REVENUE CODE SECTION 401(a)(17) AND PEPRA COMPENSATION LIMITS**

##### **A. Limitation on Annual Compensation Earnable or Pensionable Compensation, In General**

###### **1. Annual Compensation Limits**

The annual amount of compensation that is taken into account in determining all benefits provided by SBCERA to affected Members who are not subject to PEPRA

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is defined in CERL section 31461, and referred to as "Compensation Earnable".

The annual amount of compensation that is taken into account in determining all benefits provided by SBCERA to affected "new members" (as defined under Government Code section 7522.04(f) and referred to in this Policy as "PEPRA Members"), is defined in California Government Code section 7522.34, and referred to as "Pensionable Compensation".

Compensation Earnable or Pensionable Compensation, as applicable, shall in no event be greater than the amount allowed by Code section 401(a)(17), adjusted in accordance with the Code for increases in cost of living. This limit is called the "Annual IRS Compensation Limit" in this Policy, and has been increased by cost of living adjustments to \$350,000 in 2025.

In addition to the Annual IRS Compensation Limit, PEPRA Members may also be subject to the compensation limits in California Government Code section 7522.10. This limit is called the "PEPRA Compensation Limit" in this Policy. The PEPRA Compensation Limit may be adjusted as described under California Government Code section 7522.10(d) from time to time, and may produce a lower limit than the Annual IRS Compensation Limit.

At all times, the benefits of PEPRA Members are limited by the lesser of the PEPRA Compensation Limit and the Annual IRS Compensation Limit.

### 2. **Members Affected By the Annual Limit**

#### (a) Initial SBCERA Membership Prior to July 1, 1996

The Annual IRS Compensation Limit does not apply to any individual who first became an SBCERA Member prior to July 1, 1996. Such Members shall be referred to as "Grandfathered Annual Compensation Earnable Members."

An individual's original membership date into SBCERA will be used regardless of whether the Member terminated and resumed participation in SBCERA at a later date.

#### (b) Initial SBCERA Membership On and After July 1, 1996

In accordance with California Government Code section 31671, the Annual IRS Compensation Limit shall apply to all individuals who first become Members of the Association on or after July 1, 1996.

#### (c) Date First Becomes a Member

An individual first becomes a Member on the date that a Member first became a Member in SBCERA, regardless of whether the Member terminated and resumed participation in SBCERA at a later date.

### **B. Operational Rules, In General – Annual IRS Compensation Limit**

This section applies to all Members who are not Grandfathered Annual Compensation Earnable

Members.

1. **Limited Compensation Earnable and Pensionable Compensation**

All Compensation Earnable or Pensionable Compensation that would be taken into account for determining benefits provided by SBCERA without regard to this Policy is subject to the Annual IRS Compensation Limit.

Such Compensation Earnable or Pensionable Compensation is not limited to salary or to base salary.

2. **Benefits Affected by the Limit**

The Annual IRS Compensation Limit applies to the determination of all benefits provided by the Association including pensions, annuities, retirement allowances, death benefits, disability benefits, refunds and withdrawals that are determined by member contributions (including such contributions that are or may have been in the past "picked up" by the employer) and earnings thereon.

3. **Compensation Earnable or Pensionable Compensation from More Than One Employer**

If Compensation Earnable or Pensionable Compensation from more than one employer that participates in SBCERA is taken into account in determining a Member's benefits, the Annual IRS Compensation Limit shall apply separately to the Compensation Earnable or Pensionable Compensation from each employer. For example, if the Annual IRS Compensation Limit is \$350,000 for the 2025 year and the Member has Compensation Earnable of \$250,000 from one participating employer and \$125,000 from another participating employer, the unreduced total Compensation Earnable from each employer may be taken into account. The Annual IRS Compensation Limit does not apply to the aggregate of Compensation Earnable or Pensionable Compensation earned from all employers that participate in the Association.

The Pensionable Compensation used to determine a new Members' benefits may be further limited by the PEPPRA Compensation Limit in Government Code section 7522.10. Unlike the Annual IRS Compensation Limit, the PEPPRA Compensation Limit is applied in the aggregate to Pensionable Compensation from all participating employers used to calculate the SBCERA benefit. See Section II.C of this Policy below, for additional information regarding application of the PEPPRA Compensation Limit.

4. **Proration for Short Plan Year**

If a plan year consists of fewer than 12 months, the Annual IRS Compensation Limit is an amount equal to the otherwise applicable Annual IRS Compensation Limit multiplied by a fraction, the numerator of which is the number of months in the short plan year, and the denominator of which is 12. No proration is required for participation of less than a full plan year.

5. **Reciprocity and New Membership in the Association**

An individual who becomes a Member of SBCERA on or after July 1, 1996, and who has reciprocity with another public sector retirement plan nevertheless is a new Member of SBCERA for purposes of the Code. Membership prior to July 1, 1996 in another retirement plan with which SBCERA has reciprocity does not bestow Grandfathered Annual Compensation Earnable Membership to the SBCERA Member for purposes of the Annual IRS Compensation Limit.

### 6. **Reciprocity and Prior Membership In the Association**

A Grandfathered Annual Compensation Earnable Member of SBCERA, who terminates employment with an SBCERA participating employer, retains his or her Grandfathered Annual Compensation Earnable Member status. Therefore, if the Grandfathered Annual Compensation Earnable Member established reciprocity between another public sector retirement plan and SBCERA, the Grandfathered Annual Compensation Earnable Member's Compensation Earnable that is earned under the other plan shall be taken into account by SBCERA in accordance with the rules of reciprocity and that Compensation Earnable shall not be limited by the Annual IRS Compensation Limit with respect to his or her SBCERA benefit.

### 7. **Relationship Between Internal Revenue Code Section 415 Limit and Annual IRS Compensation Code Section 401(a)(17) Limit**

The limits of Internal Revenue Code section 415 and Code section 401(a)(17) are separate and independent. Each limit is operated according to its own rules and applies separately.

Therefore, the Annual IRS Compensation Limit may apply to a Member and the Code section 415 limit may not apply. Similarly, the Code section 415 limit may apply to a Member and the Annual IRS Compensation Limit may not apply. Both limits may also apply to the same Member.

### 8. **Effect of Annual IRS Compensation Limit on Member Contributions**

Because Member contributions are the basis for benefits provided by SBCERA, Member contributions shall not be made on Compensation Earnable or Pensionable Compensation in excess of the Annual IRS Compensation Limit. To the extent the provisions of PEPRA, including Government Code Section 7522.10 include greater limitations on the manner in which Member contributions may be calculated, such limits shall apply to the calculation of Member contributions.

### 9. **General Plan Year Rule for Determining the Limit**

If Compensation Earnable or Pensionable Compensation for any prior plan year is taken into account in determining a Member's benefits for the current plan year, the Compensation Earnable or Pensionable Compensation for such prior plan year is subject to the applicable Annual IRS Compensation Limit in effect for that prior plan year. However, the Annual Compensation Earnable Limit in effect for plan years beginning before January 2, 2002 is \$200,000.

## C. **Operational Rules, In General – PEPRA COMPENSATION LIMIT**

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The PEPRA Compensation Limit described in this section applies to all PEPRA Members.

1. **Limited Pensionable Compensation**

All Pensionable Compensation taken into account for determining benefits provided by SBCERA is subject to the PEPRA Compensation Limit.

2. **Benefits Affected by the Limit**

The PEPRA Compensation Limit applies to the determination of all benefits provided to new members by the Association including pensions, annuities, retirement allowances, death benefits, disability benefits, refunds and withdrawals that are determined by member contributions (including such contributions that are or may have been in the past "picked up" by the employer) and earnings thereon.

3. **Pensionable Compensation from More Than One Employer**

If Pensionable Compensation from more than one employer that participates in SBCERA is taken into account in determining a new member's benefits, the PEPRA Compensation Limit shall apply to Pensionable Compensation from each employer in the aggregate. For example, if in 2025, a new member has Pensionable Compensation of \$350,000 from one participating employer and \$125,000 from another participating employer, the PEPRA Compensation Limit would limit the amount of Pensionable Compensation that can be credited under the Association to \$155,081 (if participating in Social Security) or \$186,096 (if not participating in Social Security).

4. **Final Average Compensation**

Final compensation is calculated based on the PEPRA Compensation Limit in effect for each calendar year and the number of pay-periods per year included in the final compensation period.

The PEPRA Compensation Limit applicable to any portion of a final compensation period that consists of a short calendar year is equal to the PEPRA Compensation Limit in effect at the beginning of the calendar year multiplied by a fraction, the numerator of which is the number of pay-periods in the short plan year, and the denominator of which is 26.

For example, a member who is not subject to Social Security and has 10 pay periods in calendar year 2022, 26 pay periods in calendar year 2023, 26 pay periods in calendar year 2024, and 16 pay periods in calendar year 2025, the following calculation would apply:

	A	B	C	$D = C / 26$	E	$F = \min(A, E)$
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	Reported Pensionable Compensation	Calendar Year Limit	Pay Periods	Fraction: Pay Periods ÷ 26	Prorated Pensionable Compensation	Lesser of: Reported Pensionable Compensation and Prorated Pensionable Compensation
2022	230,000	161,969	10	0.38461538	62,295.77	62,295.77
2023	240,000	175,250	26	1	175,250.00	175,250.00
2024	250,000	181,734	26	1	181,734.00	181,734.00
2025	150,000	186,096	16	0.61538462	114,520.62	114,520.62
						533,800.38
					÷ 36 months	<b>\$14,827.79</b>

**5. Relationship Between Internal Revenue Code Section 415 Limit and PEPRA Compensation Limit in California Government Code Section 7522.10**

The limits of Internal Revenue Code section 415 and California Government Code section 7522.10 are separate and independent. Each limit is operated according to its own rules and applies separately. Therefore, the PEPRA Compensation Limit may apply to a PEPRA Member and the Code section 415 limit may not apply. Similarly, the Code section 415 limit may apply to a PEPRA Member and the Annual IRS Compensation Limit may not apply. Both limits may also apply to the same PEPRA Member.

**6. Effect of PEPRA Compensation Limit on Member Contributions**

Member contributions are the basis for benefits provided by SBCERA, contributions based on Pensionable Compensation shall not exceed the lesser of the (i) PEPRA Compensation Limit under Government Code section 7522.10 and (ii) Annual IRS Compensation Limit under Code section 401(a)(17).

**D. Annual Adjustment for Cost-of-Living Increases**

The Annual Compensation Limit may be adjusted annually by the Internal Revenue Service for cost of living changes in accordance with the Code. The PEPRA Compensation Limit may be adjusted as described under California Government Code section 7522.10(d) from time to time.

**E. Application of the Annual IRS Compensation Limit and PEPRA Compensation Limit**

In general, the Annual IRS Compensation Limit is applied to the Compensation Earnable or Pensionable Compensation for the plan year on which accruals of benefits from SBCERA are based. The PEPRA Compensation Limit is applied to Pensionable Compensation on a calendar year basis.

**1. General Rules**

For federal tax purposes, to the extent SBCERA determines Compensation Earnable or Pensionable Compensation for benefit accruals for a plan year based

on Compensation Earnable or Pensionable Compensation for the plan year, then the Annual IRS Compensation Limit that applies for that plan year is the limit in effect for the calendar year in which the plan year begins. Because SBCERA's plan year corresponds to the fiscal year beginning on the first day of July, the Compensation Earnable or Pensionable Compensation used to determine all benefit accruals for each plan year is limited to the Annual IRS Compensation Limit in effect as of January 1 of the calendar year in which the plan year begins.

With respect to Members subject to the PEPRA Compensation Limit, to the extent SBCERA determines Pensionable Compensation for benefit accruals for a final compensation period that contains a short calendar year, then the PEPRA Compensation Limit applicable to that short plan year is the PEPRA Compensation Limit in effect on the first day of the affected calendar year, prorated in the manner described earlier in this Policy.

### 2. **Member Contributions**

Since SBCERA's plan year is the fiscal year beginning on the first day of July, Compensation Earnable or Pensionable Compensation used to determine Member contributions for each plan year shall be limited to the Annual IRS Compensation Limit in effect as of January 1 of the calendar year in which the plan year begins. The PEPRA Compensation Limit shall apply to Pensionable Compensation on a calendar year basis. Thus the PEPRA Compensation Limit applied to Pensionable Compensation used to determine new member contributions shall be the PEPRA Limit in effect as of January 1 of each calendar year.

## F. **Examples**

### 1. **Retirement Allowance – Example #1**

The retirement allowance provided by SBCERA for certain Members not subject to PEPRA is based on the highest 12 consecutive months of Compensation Earnable ending within the plan year.

The Annual IRS Compensation Limit was \$345,000 for the 2024 calendar year and \$350,000 for the 2025 calendar year. A Member retires on July 1, 2025. The Member's highest 12 consecutive months of Compensation Earnable is for the period July 1, 2024 through June 30, 2025. The annual Compensation Earnable used for determining this Member's benefits for the 2024 year is limited to \$345,000, not \$350,000, because this is the limit in effect for the calendar year in which the 12-consecutive month period began.

### 2. **Retirement Allowance – Example #2**

For some Members of SBCERA, including Members subject to the requirements enacted under PEPRA, the retirement allowance provided by SBCERA is based on the highest 36 consecutive months of Pensionable Compensation ending within the plan year.

The Annual IRS Compensation Limit was \$305,000 for 2022, \$330,000 for 2023,

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\$345,000 for 2024, and \$350,000 for 2025. The new member retires on July 1, 2025. The Member has \$300,000 per year (\$25,000 per month) of compensation during the new member's highest 36 consecutive months for the period July 1, 2022 through June 30, 2025. For purposes of the Annual IRS Compensation Limit, the Association may not base the Member's benefits beginning in 2025 on annual Pensionable Compensation in excess of \$326,667, the average of the limits in effect for each of the three 12-consecutive month periods: the July 1, 2022 through June 30, 2023 period is capped at \$305,000, the 2022 limit; the July 1, 2023 through June 30, 2024 is capped at \$330,000, the 2023 limit; and the July 1, 2024 through June 30, 2025 period is capped at \$345,000, the 2024 limit. The average of these capped amounts or \$326,667 is the Annual IRS Compensation Limit for determining benefits for a new member who retires July 1, 2025.

### 3. Retirement Allowance - Example #3

The same facts as Example #2 but also assume the Member is a new member subject to the PEPRA Compensation Limit. The PEPRA Compensation Limits are as follows:

Year	Social Security Participant	Non-Social Security Participant
2025	\$155,081	\$186,096
2024	\$151,446	\$181,734
2023	\$146,042	\$175,250
2022	\$134,974	\$161,969

Since the PEPRA Compensation Limit is lower<sup>1</sup> than the Annual IRS Compensation Limit, the PEPRA Compensation Limit further reduces the new member's Pensionable Compensation for benefit calculation purposes. The PEPRA Compensation Limit is also applied on a calendar year basis using a prorated PEPRA Compensation Limit in any partial calendar year in the final compensation period. For the period July 1, 2022 to December 31, 2022, the PEPRA Compensation Limit is \$67,487 (for Social Security participants) or \$80,984.50 (for non-Social Security participants). For the period January 1, 2023 to December 31, 2023, the PEPRA Compensation Limit applicable to the members Pensionable Compensation is \$146,042 (for Social Security participants) or \$175,250 (for non-Social Security participants). For the period January 1, 2024 to December 31, 2024, the PEPRA Compensation Limit applicable to the members Pensionable Compensation is \$151,446 (for Social Security participants) or \$181,734 (for non-Social Security participants). For the period January 1, 2025 to June 30, 2025, the PEPRA Compensation Limit applicable to the members Pensionable Compensation is \$77,540.50 (for Social Security participants) or \$93,048.00 (for non-Social Security participants).

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<sup>1</sup> At the time of adoption of this Policy, the PEPRA Compensation Limit is lower than the Annual IRS Compensation Limit. These examples are drafted in a manner that reflects a lower PEPRA Compensation Limit. As these limits are adjusted for the cost of living, this may change and the examples may need revision to reflect the change in limits.

### 4. **Member Contributions – Example #1**

The refund or withdrawal benefits from Member contributions are accrued on an annual basis. For purposes of calculating Member contributions, SBCERA applies the Annual IRS Compensation Limit on a plan year basis. The Annual IRS Compensation Limit was \$345,000 for the 2024 calendar year, and \$350,000 for the 2025 calendar year. Thus Member contributions made from July 1, 2024 through June 30, 2025 are calculated based on Compensation Earnable or Pensionable Compensation not to exceed \$345,000.

For Members subject to the PEPRA Compensation Limit, Member contributions are calculated and deducted from Pensionable Compensation on a calendar year basis. For PEPRA Member contribution purposes, the PEPRA Compensation Limit in effect at the beginning of the calendar year is applied to Pensionable Compensation made from January 1 to December 31. For example, PEPRA Member contributions made in 2024 are calculated and deducted on Pensionable Compensation up to the 2024 PEPRA Compensation Limit of \$151,446 (for Social Security participants) or \$181,734 (for non-Social Security participants).

## II. **INTERNAL REVENUE CODE SECTION 415(b): ANNUAL BENEFIT LIMIT**

### A. **Annual Benefit Limit, In General**

#### 1. **Annual Limit**

Unless an exception applies, the Annual Benefit payable to a Member under SBCERA shall not exceed the dollar limit specified under section 415(b)(1)(A) of the Code, as automatically adjusted under Code § 415(d). Herein after referred to as the "Annual Benefit Limit."

In the case of a Member who dies mid-year, the Annual Benefit paid to a Member under SBCERA in the year of death shall not exceed the Annual Dollar Limit, prorated to the Member's date of death. Any benefits paid to a Member who dies mid-year in excess of the prorated Annual Dollar Limit shall be treated as an overpayment and corrected in accordance with the IRS' Employee Plans Compliance Resolution System ("EPCRS") under Revenue Procedure 2021-30 (or its successor) and related IRS guidance.

#### 2. **Maximum Payment**

If the benefit the Member would otherwise be paid during a Limitation Year would be in excess of the Annual Benefit Limit, such benefit shall be limited to an amount not exceed the Annual Benefit Limit.

#### 3. **COLA Adjustment**

In the case of a Member who has had a Severance From Employment with the Employer, the Annual Benefit Limit applicable to the Member in any Limitation Year beginning after the date of severance shall be automatically adjusted under § 415(d) of the Code.

4. **Multiple Annuity Starting Dates**

- (a) For a Member who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Policy as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates.
- (b) For this purpose, the determination of whether a new starting date has occurred shall be made in accordance with section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Treasury regulations.

5. **Actuarial Adjustment For Forms Of Benefit**

Except as provided in Section II.A.6. below, if the Member's benefit is payable in a form other than a Straight Life Annuity, then solely for purposes of applying the limits of Code § 415 and of this Policy, the actuarially equivalent Straight Life Annuity shall be determined in accordance with paragraph (a) or (b) below, whichever is applicable.

(a) **Annuities**

If the Member's benefit is payable in the form of a non-decreasing life Annuity or other form of benefit described in Treas. Reg. § 1.417(e)-1(d)(6), then the actuarially equivalent Straight Life Annuity is equal to the greater of:

- (i) The Straight Life Annuity (if any) payable to the Member under SBCERA commencing at the same Annuity Starting Date as the form of benefit payable to the Member, or
- (ii) The annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the form of benefit payable to the Member computed using:
- (iii) The Applicable Mortality Table; and
- (iv) A 5% interest assumption.

(b) **Lump sums, Installments, Etc.**

If the Member's benefit is payable in the form of a lump sum, installments, a decreasing Annuity, term certain or other form of benefit not described in Treas. Reg. §1.417(e)-1(d)(6), then the Straight Life Annuity that is actuarially equivalent to the Member's form of benefit is equal to the greatest of:

- (i) The annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the form of benefit payable to the Member computed using the interest rate and the mortality table specified in the Plan for

adjusting benefits in the same form;

- (ii) The annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the form of benefit payable to the Member computed using a 5.5 percent interest rate and the Applicable Mortality Table; or
- (iii) The annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the form of benefit payable to the Member computed using the Applicable Interest Rate and the Applicable Mortality Table divided by 1.05.

### 6. **No Actuarial Adjustment (Or Limitation) Required For Certain Benefits.**

In determining the Annual Benefit, no actuarial adjustment to the benefit shall be made for the following benefits or benefit forms:

#### (a) **Qualified joint and survivor Annuity.**

Survivor benefits payable to a surviving Spouse under a joint and survivor Annuity that would qualify as a qualified joint and survivor Annuity defined in Code § 417(b). If benefits are paid partly in the form of a qualified joint and survivor Annuity and partly in some other form (such as a single sum distribution), the rule of this Section II.A.6. applies only to the survivor Annuity payments under the portion of the benefit that is paid in the form of a qualified joint and survivor Annuity.

#### (b) **Benefits that are not "retirement benefits".**

Benefits that are not directly related to retirement benefits (such as pre-retirement qualified disability benefits, preretirement incidental death benefits, and postretirement medical benefits). Additionally, these benefits shall not be subject to the Annual Benefit Limit.

#### (c) **Certain automatic benefit increases.**

Benefits that meet the following requirements:

- (i) SBCERA provides for automatic periodic increases such as a form of benefit that automatically increases the benefit paid according to a specified percentage or objective index (but not a benefit that is increased on an ad hoc basis or a basis that is separately determined by action of SBCERA's Board of Retirement or the County of San Bernardino's Board of Supervisors) and
- (ii) the form of benefit complies with Code § 415(b) without regard to the automatic benefit increase.

In no event shall the amount payable to the Member under the form of benefit in any Limitation Year be greater than the Annual Benefit Limit applicable at the

Annuity Starting Date increased by the amounts provided in Code § 415(d). Also if the form of benefit without regard to the automatic benefit increase is not a Straight Life Annuity, then the Annual Benefit at the Annuity Starting Date is determined by converting the form of benefit to an actuarially equivalent Straight Life Annuity, as provided in Section II.A.5. of this Policy.

### 7. Rules for Determining Annual Benefit.

#### (a) Social Security Supplements, Etc.

The determination of the Annual Benefit shall take into account social security supplements described in Code § 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to Treas. Reg. § 1.411(d)-4, Q&A-3(c).

#### (b) Member Contributions.

The determination of the Annual Benefit shall disregard benefits attributable to Member contributions or rollover contributions. Benefits attributable to Member contributions do not include any benefits that are made on a pre-tax basis such as pickups under Code § 414(h)(2) or such as Member contributions that are actually paid by the Member's Employer.

#### (c) Rollovers.

The amount of any benefits attributable to Member contributions and to rollover contributions shall be determined in accordance with Code § 415.

#### (d) Voluntary Contributions.

Member contributions that are defined as "voluntary" contributions under Code § 415 (such as certain contribution under California Government Code section 31627) are not subject to the limits of this Policy but are subject to the limits of Code § 415(c) concerning defined contribution plans.

### B. Annual Benefit Limit: Reduction for Less Than 10 Years of Participation

#### 1. Reduction

If the Member has less than 10 Years of Participation in SBCERA, the Annual Benefit Limit shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in SBCERA, and (ii) the denominator of which is 10. The reduction described in this Section II.B.1. shall not apply to disability benefits or death benefits as provided in the Code.

#### 2. Counting Years of Participation

The Member is credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (i) the Member is credited with at least the number of hours of service or

period of service for benefit accrual purposes, required under the terms of SBCERA in order to accrue a benefit for the accrual computation period, and (ii) the Member is included as a Member under the eligibility provisions of SBCERA for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Member shall equal the portion of a year of benefit accrual service credited to the Member for such accrual computation period. A Member who is permanently and totally disabled within the meaning of Code § 415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period. In no event shall more than one Year of Participation be credited for any 12-month period. For example, if an SBCERA Member receives 1/10 of a year of benefit accrual service for an accrual computation period for each 200 hours of service, and the Member is credited with 1,043.5 hours of service for the period (based on SBCERA's policy of regarding a full year's service as 2087 hours), the Member is credited with 1/2 year of participation for purposes of this subsection.

### **C. Annual Benefit Limit: Reduction for Commencement Before Age 62 For Certain Members**

#### **1. No Reduction For Certain Safety Members**

The adjustment described in this subsection shall not apply if the Member's benefit is based on at least 15 years as a full-time employee of any police or fire department of an Employer that maintains SBCERA or as a member of the armed forces of the United States. Such police or fire department must be organized to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such Employer.

#### **2. Reduction For Benefits Commencing Before Age 62**

If the Member's benefits commence before the Member attains age 62, the Annual Benefit Limit is equal to the lesser of:

- (a) The Annual Benefit Limit reduced in accordance with Code § 415(b) to its actuarial equivalent using:
  - (i) The Applicable Mortality Table; and
  - (ii) A 5% interest rate; or
- (b) The Annual Benefit Limit multiplied by the ratio of the immediately commencing Straight Life Annuity under SBCERA at the Member's Annuity Starting Date to the annual amount of the Straight Life Annuity under SBCERA commencing at age 62, both determined without applying the limitations of this Policy.

The adjustment described in this Section II.C.2. shall not apply to disability benefits or death benefits.

#### **3. Probability of Death**

No adjustment will be made to the Annual Benefit limit to reflect the probability of death between the Annuity Starting Date and age 62 unless the Member's benefit is forfeited at death before the Annuity Starting Date.

**4. Death and Disability**

The adjustment described in paragraph 1 of this subsection shall not apply to disability benefits or death benefits.

**D. Annual Benefit Limit: Increase for Commencement After Age 65**

**1. Increase For Benefits Commencing After Age 65**

If the Member's benefits commence after the Member attains age 65, the Annual Benefit Limit is equal to the lesser of:

- (a) The Annual Benefit Limit increased in accordance with Code § 415(b) to its actuarial equivalent using:
  - (i) The Applicable Mortality Table; and
  - (ii) A 5% interest rate; or
- (b) The Annual Benefit Limit multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under SBCERA at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under SBCERA at age 65, both determined without applying the limitations of this Policy. For this purpose, the adjusted immediately commencing Straight Life Annuity under SBCERA at the Member's Annuity Starting Date is the annual amount of such Annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under SBCERA at age 65 is the annual amount of such Annuity that would be payable under the Association to a hypothetical Member who is age 65 and has the same accrued benefit as the Member.

**2. Probability of Death**

No adjustment will be made to the Annual Benefit Limit to reflect the probability of death between age 65 and the Annuity Starting Date unless the Member's benefit is forfeited at death before the Annuity Starting Date.

**E. Minimum Benefit Permitted**

The benefit otherwise accrued or payable to a Member under SBCERA is treated as not exceeding the Annual Benefit Limit if:

**1. Minimum Benefit Limit Allowed**

The sum of the retirement benefits payable under any form of benefit with respect to the Member for the Limitation Year or for any prior Limitation Year under SBCERA and all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Member's Employer does not exceed \$10,000 multiplied by a fraction – (i) the numerator of which is the Member's number of years (or part thereof, but not less than one year) of service (not to exceed 10) with the Member's Employer or an Affiliated Employer, and (ii) the denominator of which is 10; and

**2. Condition**

The Member has never participated in any qualified defined contribution plan maintained by the Member's Employer or an Affiliated Employer.

**F. Participation In Multiple Defined Benefit Plans**

**1. Application of Limit to Aggregate Benefits**

If the Member is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Member's Employer, the aggregate sum of the participant's Annual Benefits from all such plans may not exceed the Annual Benefit Limit.

**2. Multiple Plan Benefit Limit Coordination**

Where the Member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Annual Benefit Limit applicable at that age, the benefits accrued under all such other plans shall be reduced first in order to avoid exceeding the Annual Benefit Limit, and then reduced from SBCERA but only to the extent that the reduction under such other plans is insufficient to avoid exceeding the Annual Benefit Limit.

**G. Multiple-Employer Plan**

Employer-provided benefits for the Member attributable to all of the Employers participating in SBCERA are taken into account for purposes of applying the Annual Benefit Limit.

**H. GRANDFATHER RULES: Special Annual Benefit Limit for Qualifying Members**

By the enactment of Section 31899 et. seq. of the California Government Code, the "grandfather" election under Code section 415(b)(10) was made for SBCERA and all retirement systems maintained under the CERL.

Therefore, notwithstanding anything herein to the contrary, the Annual Benefit Limit with respect to a Qualified Member shall not be less than the accrued benefit of the Qualified Member under SBCERA determined without regard to any amendment made after October 14, 1987.

For purposes of this Section II.H., the term "Qualified Member" means a Member who first became a Member in SBCERA before January 1, 1990.

**I. Application of Annual Benefit Limit to Purchase Of Permissive Service Credit**

### 1. **General Rule**

To the extent not prohibited by the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), if a Member makes one or more contributions to SBCERA to purchase Permissive Service Credit under SBCERA, then the requirements of this Policy will be treated as met only if:

- (a) The requirements of this Section II of this Policy governing the limits on Annual Benefits applicable to defined benefit plans are met, determined by treating the accrued benefit derived from all such contributions as an Annual Benefit; or
- (b) The requirements of Section III of this Policy governing the limits on Annual Additions applicable to defined contribution plans are met by treating all such contributions as Annual Additions.

### 2. **Permissive Service Credit**

For purposes of this Section, "Permissive Service Credit" means credit:

- (a) recognized by SBCERA for purposes of calculating a Member's benefit under the Association;
- (b) which such Member has not received under SBCERA; and
- (c) which the Member may receive only by making a voluntary additional contribution in an amount determined under SBCERA, which does not exceed the amount necessary to fund the benefit attributable to the service credit purchased.

Permissive Service Credit also includes service credit for periods for which there is no performance of service and, notwithstanding Section II.I.2.b. above, may include service credited in order to provide an increased benefit for service credit which a Member is receiving under SBCERA, but only to the extent not prohibited by PEPRA.

### 3. **Limitation on Nonqualified Service Credit**

SBCERA will fail to satisfy the requirements of this Policy if:

- (a) More than 5 years of Nonqualified Service Credit is taken into account for purposes of this Section; or
- (b) Any Nonqualified Service Credit is taken into account under this Section before the Member has at least 5 Years of Participation under SBCERA.

### 4. **Nonqualified Service Credit Defined**

For purposes of Section II.I.3. above, the term "Nonqualified Service Credit" means permissive service credit other than that allowed with respect to:

- (a) Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, a State or political

subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of repayment of cash-outs);

- (b) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Section II.I.4.a.) of an educational organization described in Code § 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;
- (c) Service as an employee of an association of employees who are described in Section II.I.4.a.; or
- (d) Military service (other than qualified military service under Code § 414(u)) recognized by SBCERA.

In the case of service described in subparagraphs a, b or c above, such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same period of service under more than one plan. Even if any proposed service credit purchase meets the above requirements, to the extent such proposed service credit purchase is prohibited under the terms of PEPRA, SBCERA will not process such service credit purchase.

**5. Trustee-to-Trustee Transfers**

In the case of a trustee-to-trustee transfer to the Association to which Code § 403(b)(13)(A) or § 457(e)(17)(A) applies, (without regard to whether the transfer is made from a plan that is maintained by the same Employer):

- (a) the Nonqualified Service Credit rules shall not apply in determining whether the transfer is for the purchase of Permissive Service Credit; and
- (b) the distribution rules applicable under the Code to SBCERA shall apply to such amounts and any benefits attributable to such amounts.

**6. Repayment of Cash-outs**

In the case of any repayment of contributions (including interest) to SBCERA with respect to an amount previously refunded upon a forfeiture of service credit under SBCERA or under another governmental plan maintained by a state or local government employer within the State of California, any such repayment shall not be taken into account for purposes of this Policy.

**III. INTERNAL REVENUE CODE SECTION 415(c): ANNUAL ADDITIONS LIMIT**

**A. Annual Additions Limit, In General**

Notwithstanding anything to the contrary contained in the Association, the total Annual Additions allocated to a Member's Account under the Association, when added to the Annual Additions

allocated to the Member's accounts under all other Aggregated Plans maintained by the Employer or an Affiliate for any Limitation Year, shall not exceed the Maximum Permissible Amount; provided, however, that the limit described in VIII.R.2 shall not apply the Code § 415(c) limitation to an individual medical benefit account (as defined in Code § 415(l)).

### **B. Aggregation With Other Defined Contribution Plans**

All defined contribution plans (as defined in Treas. Reg. § 1.415(c)-1(a)(2) whether or not terminated) maintained by the Employer or an Affiliate shall be aggregated with the Association, and all plans so aggregated shall be considered as one plan in applying the limitations of this Policy.

### **C. Coordination With Other Defined Contribution Plans**

In the event that a Member participates in another defined contribution plan of the Employer or of an Affiliate that is a tax-qualified defined contribution plan, contributions or allocations that would otherwise be made on behalf of the Member to SBCERA shall be reduced to the extent necessary to avoid exceeding the limitations of this Policy when contributions are aggregated as described in Sections III.A. and III.B. above.

### **D. Correction**

Any excess Annual Additions shall be corrected using the methods specified in guidance promulgated by the United States Secretary of the Treasury describing the procedures for correcting excess Annual Additions under the Employee Plans Compliance Resolution System ("EPCRS") or its successor.

## **IV. INTERNAL REVENUE CODE SECTIONS 401(a)(31) and 402(c) ROLLOVERS**

### **A. Types Of Rollovers**

#### **1. Direct Rollover**

A "Direct Rollover" is that portion of an Eligible Rollover Distribution SBCERA pays directly to an Eligible Retirement Plan, and may also be referred to as a trustee-to-trustee transfer to an Eligible Retirement Plan, at the direction of an Eligible Individual. Only an Eligible Individual may elect to make a Direct Rollover.

#### **2. Indirect Rollover**

An "Indirect Rollover" is that portion of an Eligible Rollover Distribution that SBCERA pays directly to an Eligible Individual.

### **B. Rollover Distributions From SBCERA**

#### **1. Eligible Rollover Distribution**

SBCERA will pay a Direct Rollover on behalf of an Eligible Individual only if the payment is an Eligible Rollover Distribution. SBCERA will pay an Eligible Rollover Distribution directly to an Eligible Retirement Plan.

#### **2. After-Tax Portion of Eligible Rollover Distribution**

The portion of a distribution that consists of after-tax Member contributions may be rolled over if the after-tax funds are transferred in a direct trustee-to-trustee transfer to (a) a qualified trust or (b) an annuity contract described in Code § 403(b). After-tax Member contributions may also be rolled over to an individual retirement account or annuity described in Code § 408(a) or (b). The qualified trust or annuity contract must separately account for the transferred after-tax amounts, and must also separately account for the earnings on the after-tax amounts.

### **C. Direct Rollovers from SBCERA: Requirements**

#### **1. Withholding**

SBCERA will not withhold any federal or state income taxes from a Direct Rollover. The only exception is that SBCERA will withhold federal or state income taxes from a Direct Rollover to a Roth IRA if the Eligible Individual requests that withholding on a form and in the manner prescribed by SBCERA.

#### **2. Electing a Direct Rollover**

An Eligible Individual who wishes to receive a Direct Rollover must complete a distribution form in the manner and form that SBCERA prescribes. SBCERA may require the Eligible Individual to provide any reasonable information and/or documentation for purposes of administering the Direct Rollover in accordance with the Code.

#### **3. Rollover Payment**

The Eligible Individual must provide SBCERA with the name of the Eligible Retirement Plan to which the rollover payment will be made payable for his or her benefit. If the Eligible Individual so chooses, SBCERA will provide this rollover payment directly to the Eligible Individual who will be responsible for delivering the payment to the recipient IRA or plan.

#### **4. Eligible Individual's Responsibility Re Recipient Plan**

The Eligible Individual is responsible for ensuring that any Eligible Retirement Plan that he or she has designated to receive the Eligible Individual's distribution from SBCERA in a Direct Rollover is an Eligible Retirement Plan that will accept and receive the rollover on his or her behalf in accordance with the applicable tax rules.

#### **5. Time of Payment**

SBCERA will pay a Direct Rollover on behalf of an Eligible Individual as soon as is reasonably and administratively practicable in accordance with its withdrawal and/or death benefit payment processes.

### **D. Indirect Rollover From SBCERA: Requirements**

#### **1. Indirect Rollover Eligibility**

An Eligible Individual, other than a non-spouse beneficiary, may also choose to receive a rollover payment as an Indirect Rollover.

#### **2. Indirect Rollover Withholding**

An Indirect Rollover is subject to 20% federal income tax withholding and any applicable state withholding. SBCERA will withhold and deduct these taxes on behalf of the Eligible Individual as prescribed by federal and applicable state law.

### 3. **Eligible Individual's Responsibility Re Recipient Plan**

It is the responsibility of the Eligible Individual to roll over all or some portion of his or her Indirect Rollover payment to an IRA or eligible employer plan within 60 days if he or she wants the payment to qualify as a rollover for tax purposes. If an Eligible Individual wants to roll over 100% of the payment, the Eligible Individual must replace the 20% that was withheld for federal income taxes (and any applicable state withholding) with other money.

## E. **Direct Rollover From SBCERA To A Non-Spouse Beneficiary**

### 1. **Direct Transfer Required**

A rollover on behalf of a non-spouse beneficiary must be a Direct Rollover or trustee-to-trustee transfer.

### 2. **Non-Spouse Beneficiaries Rollover to Inherited IRA Required**

A non-spouse beneficiary who is a "designated beneficiary" under Code § 401(a)(9)(E) may roll over all or any portion of the non-spouse beneficiary's Eligible Rollover Distribution to an IRA that is established by the non-spouse beneficiary for purposes of receiving the distribution and that is treated as an "inherited IRA" under the Code. The IRA must be established in a manner that identifies it as an IRA with respect to a deceased individual and it must identify the deceased individual and the beneficiary (for example, "Tom Smith as beneficiary of John Smith").

### 3. **Trust as Beneficiary**

If the non-spouse beneficiary is a trust, SBCERA may make a Direct Rollover to an IRA on behalf of the trust, provided the beneficiaries of the trust satisfy the requirements to be designated beneficiaries within the meaning of Code § 401(a)(9)(E). The IRA on behalf of the trust must be established in a manner that identifies it as an IRA with respect to a deceased individual and it must identify the deceased individual and the trust beneficiary (for example, "The Smith Family Trust as beneficiary of John Smith").

## F. **Notice Requirements**

### 1. **402(f) Notice From the Association**

SBCERA will provide the tax notice required under Code § 402(f) to each Eligible Individual who requests a withdrawal from SBCERA.

### 2. **Time Periods**

SBCERA will not process any withdrawals until 30 days after the date such notice is received by the Eligible Individual requesting the withdrawal. If, however, the Eligible Individual waives this 30-day period on a form and in the manner prescribed by SBCERA, SBCERA may process the withdrawal before the 30-day

period expires.

### **G. Rollover Contributions To SBCERA**

Adoption of a Policy providing for the acceptance of certain rollover contributions as determined below does not create any continuing entitlement for Eligible Members to make rollover contributions to SBCERA and the right to make rollover contributions to SBCERA may be amended or terminated at any time and for any reason.

If SBCERA has determined to permit any rollover contributions, SBCERA will permit Eligible Members to make a rollover contribution to the SBCERA subject to the limitations and conditions described in this Section IV.G.

#### **1. Eligible Member**

An "Eligible Member" is (1) an active Member of SBCERA, or (2) a Member of SBCERA that has elected a deferred retirement.

#### **2. Rollovers Allowed**

SBCERA will permit an Eligible Member to make a rollover contribution to SBCERA (a) to purchase service credit (to the extent a purchase of service credit is not prohibited under the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), or (b) for the redeposit of previously withdrawn funds plus accumulated interest.

#### **3. Separate Accounting**

SBCERA will separately account for all rollover contributions.

#### **4. Certification to the Association By Member**

Only eligible rollover distributions as defined by Code § 402(c)(4) can be contributed to SBCERA. In addition to any requirements under Sections IV.H, I and J below, each Eligible Member making a rollover contribution to SBCERA must certify in writing the source of the rollover funds and that the rollover contribution is an eligible rollover distribution under the Code. SBCERA will not accept rollovers of any after-tax contributions or amounts attributable to designated Roth contributions, amounts that represent minimum required distributions, or any rollover that is an indirect rollover.

#### **5. Elections and Association Discretion**

An Eligible Member must make an election to purchase service credit or redeposit previously withdrawn contributions with a rollover contribution in the manner and form that is prescribed by SBCERA. SBCERA has final discretionary authority to determine whether any required information or documentation is satisfactory, whether a purchase of service credit would be prohibited under PEPRA, and whether SBCERA will accept an Eligible Member's rollover contribution.

#### **6. Correction of Errors**

If SBCERA accepts a rollover contribution that it later determines was not eligible to be rolled over to SBCERA, SBCERA will distribute, as soon as administratively

possible, the amount of the rollover contribution to the Eligible Member, plus accumulated interest. Such distributions may have tax consequences for the Member.

### H. Rollovers To SBCERA From A Qualified Plan

#### 1. Acceptance of Rollover

SBCERA may accept a rollover from another plan that is qualified under Code § 401(a) and exempt from tax under Code § 501(a). This includes, but is not limited to, other defined benefit pension plans governed by the CERL, and defined contribution plans that are subject to Code § 401(k).

#### 2. Required Due Diligence Procedure

SBCERA must take reasonable steps to confirm the sending plan's tax-qualified status and that the rollover contribution is valid. SBCERA may rely on IRS guidance such as that provided in Revenue Ruling 2014-9 and any successor guidance with respect to simplified due diligence processes that may be allowed by the Internal Revenue Service.

##### (a) Eligible Member Certification

The Eligible Member must provide the following additional information to SBCERA:

- (i) A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution is from a Code section 401(a) qualified plan, contains no after-tax or designated Roth contributions or earnings, or any amounts representing a required minimum distribution under Code section 401(a)(9); or
- (ii) A signed certification from the transferring plan's administrator that the rollover contribution contains no after-tax or designated Roth contributions or earnings, nor any amounts representing a required minimum distribution under Code section 401(a)(9).

If an Eligible Member does not provide such evidence, SBCERA will not accept the rollover.

##### (b) SBCERA Verification of Payment Source

SBCERA must take reasonable steps to verify that the payment source (on the incoming check or wire transfer) is the former 401(a) plan of the Eligible Member as represented by the Eligible Member on his or her request to make a rollover.

##### (c) SBCERA Verification That the Plan is a Tax-Qualified Plan

SBCERA must take reasonable steps to verify that the rollover will be from a tax-qualified plan which can include the following or any other methods allowed in guidance issued by the IRS.

- (i) SBCERA may look up the transferring plan's latest Form 5500 filing, if any, in the Department of Labor's EFAST2 database for assurance that the plan is intended to be a qualified plan. SBCERA will check the entry on the line for characteristics indicating that the plan is intended to be a qualified plan (e.g. examining line 8a on the current Form 5500 or line 9a on Form 5500-SF). If Code 3C is not entered on these lines SBCERA may reasonably conclude that the plan is qualified, unless SBCERA has any direct evidence to the contrary.
- (ii) If the qualified plan is not required to file Form 5500 or Form 5500-SF, then the Eligible Member must provide one of the following to SBCERA demonstrating the source of the rollover contribution is a qualified plan: (a) a copy of the plan's most recent favorable determination letter from the IRS stating the plan is tax-qualified and a written certification from the plan's administrator that the plan continues to be tax-qualified, or (b) a written and signed certification from the plan's administrator that the source of the eligible rollover distribution is a qualified plan under Code § 401(a).

### **I. Rollovers To SBCERA From An IRA**

#### **1. Acceptance of Rollover**

SBCERA may accept a rollover from an individual retirement account or annuity (IRA) described in Code § 408(a) or Code § 408(b).

#### **2. Required Due Diligence Procedure**

SBCERA must take reasonable steps to confirm the IRA's status and that the rollover contribution is valid. SBCERA may rely on IRS guidance such as that provided in Revenue Ruling 2014-9 and any successor guidance with respect to simplified due diligence processes that may be allowed by the IRS.

##### **(a) Eligible Member Certification**

The Eligible Member must provide the following additional information to the Association:

- (i) A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution is from his or her IRA and contains no after-tax or designated Roth contributions or earnings, nor any amounts representing a required minimum distribution under Code § 401(a)(9); or
- (ii) If the Eligible Member cannot certify, with respect to the after-tax or designated Roth contributions, a signed certification from an accountant or tax advisor or the IRA trustee/custodian providing the amount of pre-tax contributions and after-tax or designated Roth contributions in the IRA. SBCERA will only accept a rollover contribution from the IRA in the amount of the pre-tax contributions and earnings. If an Eligible Member does not provide such

evidence, SBCERA will not accept the rollover.

(b) **SBCERA Verification of Payment Source**

SBCERA must take reasonable steps to verify that the payment source (on the incoming check or wire transfer) is the IRA of the Eligible Member as represented by the Eligible Member on his or her request to make a rollover.

**J. Rollovers To SBCERA From Other Plans: 457(b) And 403(b)**

**1. Acceptance of Rollover**

The Association may accept rollover contributions from an eligible plan under Code § 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (a "governmental 457(b) plan"), and an annuity contract described in Code § 403(b).

**2. Required Due Diligence Procedure**

SBCERA must take reasonable steps to confirm the sending plan's status as an eligible 457(b) plan or an eligible Code § 403(b) annuity or custodial account and that the rollover contribution is valid. SBCERA may rely on IRS guidance such as that provided in Revenue Ruling 2014-9 and any successor guidance with respect to simplified due diligence processes that may be allowed by the IRS.

(a) **Eligible Member Certification**

The Eligible Member must provide the following additional information to SBCERA:

- (i) A statement signed under penalty of perjury by the Eligible Member certifying that the rollover contribution is from an eligible 457(b) or 403(b) plan and contains no after-tax or designated Roth contributions or earnings; or
- (ii) A signed certification from the transferring plan's administrator that the rollover contribution contains no after-tax or designated Roth contributions or earnings.

If an Eligible Member does not provide such evidence, SBCERA will not accept the rollover.

(b) **SBCERA Verification of Payment Source**

SBCERA must take steps to verify that the payment source (on the incoming check or wire transfer) is the former eligible 457(b) or 403(b) plan of the Eligible Member as represented by the Eligible Member on his or her request to make a rollover.

(c) **SBCERA Verification That the Plan is an Eligible Plan**

SBCERA must take reasonable steps to verify that the rollover will be from an eligible 457(b) plan or 403(b) plan which can include the following or any other methods allowed in guidance issued by the (IRS).

- (i) SBCERA may look up the transferring plan's latest Form 5500 filing, if any, in the Department of Labor's EFAST2 database for assurance that the plan is intended to be a qualified plan. SBCERA will check the entry on the line for characteristics indicating the plan is intended to be an eligible 457(b) or 403(b) plan (e.g., examining line 8a on the current Form 5500 or line 9a on Form 5500-SF). If Code 3C is not entered on these lines, SBCERA may reasonably conclude that the plan is an eligible plan, unless SBCERA has any direct evidence to the contrary.
- (ii) If the 457(b) or 403(b) plan is not required to file Form 5500 or Form 5500-SF, then the Eligible Member must provide one of the following to SBCERA demonstrating that the source of the rollover contribution is an eligible governmental 457(b) plan or a Code § 403(b) plan: (a) a copy of the transferring plan's most recent private letter ruling from the IRS stating that the transferring plan qualifies as an eligible governmental 457(b) plan or a Code section 403(b) plan, as applicable, and a signed certification from the transferring plan's administrator that the transferring plan continues to be so qualified, or (b) a signed certification from the transferring plan's administrator that the rollover distribution source is an eligible governmental 457(b) plan or a Code § 403(b) plan, as applicable.

If the above verification cannot be made, SBCERA will not accept the rollover.

### **V. INTERNAL REVENUE CODE SECTION 401(a)(9): REQUIRED MINIMUM DISTRIBUTION RULES**

In accordance with section 823 of the Pension Protection Act of 2006 ("PPA"), and section 1.401(a)(9)-1(a)(3) of the Treasury regulations this Policy is promulgated in accordance with a reasonable good faith interpretation of Code § 401(a)(9), and the Treasury Regulations thereunder, as applicable to a governmental plan within the meaning of section 414(d) of the Code.

Notwithstanding the other requirements of this Policy to the contrary, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act.

#### **A. Time And Form Of Payment**

##### **1. Required Beginning Date**

A Member's entire interest will be distributed, or begin to be distributed, no later than the Member's Required Beginning Date.

##### **2. Periodic And Other Forms Of Payments**

A Member's entire interest in SBCERA shall be distributed in the form of RMD Annuity payments that meet the requirements of Section V.A.3. or in the form of a single sum or an insurance company annuity contract that meets the requirements Section V.A.4. Payments may be made in a combination of these forms of payment and may include lump sum refunds or withdrawals of Member contributions or death benefits as provided in the CERL provided that these forms comply with a reasonable good faith interpretation of Code § 401(a)(9).

### 3. **General Rules Regarding RMD Annuities**

If the Member's interest is to be paid in the form of an RMD Annuity, the RMD Annuity must meet the following requirements:

(a) **Periodic**

RMD Annuities must be paid over equal payment intervals which may not be longer than one year.

(b) **Distribution Period**

RMD Annuities will be paid over the life or lives of the Member and a beneficiary or over a period certain that does not exceed the maximum length of the period described in Section V.C. or Section V.D. of this Policy.

(c) **Increases**

RMD Annuities may not increase over time except in accordance with the rules in Section V.E.

(d) **Change in Period Paid**

The period over which an RMD Annuity is paid can be changed only in accordance with Treas. Reg. § 1.401(a)(9)-6(n).

(e) **Commencement**

Payment of the RMD Annuity must start no later than the Required Beginning Date.

### 4. **Other Forms**

(a) **Annuity Contract**

If the Member's interest is distributed in the form of an annuity contract purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code § 401(a)(9).

(b) **Individual Account**

Any part of the Member's interest which is in the form of an individual account described in Code § 414(k) will be distributed in a manner satisfying the requirements of Code § 401(a)(9) that apply to individual accounts.

**B. Amounts Required To Be Distributed By the Required Beginning Date and Later Payment Intervals**

The amount that must be distributed on or before the Member's Required Beginning Date is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Member's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date. If the Member dies before distributions begin, the same rules apply with reference to the date distributions are required to begin under Sections V.D.1.a or V.D.1.b.

**C. RMD Annuity Distributions Beginning During Member's Life**

The following rules must be met to comply with the requirements of the Code and this Policy for RMD Annuities that begin during the Member's lifetime.

**1. Single Life RMD Annuity**

An RMD Annuity that begins no later than the Required Beginning Date and is paid for the Member's lifetime only, with no benefits paid to any other person, meets the requirements of the Code and this Policy.

**2. Joint and Survivor RMD Annuity - Death of Member After Benefits Begin**

If Member dies after RMD Annuity payments have commenced to the Member, then distributions must continue to be made over the remaining period over which distributions commenced in accordance with the schedule of payments made to the Member. Reasonable delay for administration may occur, but in this case payments that should have been made in accordance with the original payment schedule must be made with the first resumed payment.

**3. Joint and Survivor RMD Annuity With Spouse as the Sole Beneficiary**

An RMD Annuity that begins no later than the Required Beginning Date and is paid for the Member's lifetime and the lifetime of the Member's surviving Spouse, with no benefits paid to any other person, meets the requirements of the Code and this Policy regardless of the difference in age of the Member and the Member's Spouse in accordance with Treasury regulation section 1.401(a)(9)-6(b)(2)(ii).

**4. Joint and Survivor RMD Annuity When the Sole Beneficiary Is Not the Member's Spouse**

**(a) Limit on Percentage of Member's RMD Annuity Paid to Non-Spouse Beneficiary**

The survivor annuity percentage of an RMD Annuity that begins no later than the Required Beginning Date and is paid for the Member's lifetime and the lifetime of a beneficiary other than the Member's surviving Spouse must not at any time exceed the applicable percentage of the RMD Annuity payment during the Member's lifetime, using the table set forth in Treas.

Reg. § 1.401(a)(9)-6(b)(2)(iii), as determined in the manner described in Treasury regulation section 1.401(a)(9)-6(b)(2)(iii). This Treasury Regulation requires that the RMD Annuity payable to the Member's beneficiary after the Member's death not exceed the percentage of the RMD Annuity payable to the Member during the Member's life specified in the table if the adjusted age difference between the Member and the beneficiary is more than 10 years.

(b) Rule Regarding Children of Member

Under a good faith interpretation of the Code as provided under 1.401(a)(9)-1(a)(3), and in accordance with Treasury regulations section 1.401(a)(9)-6(p),, , and taking into account the vested rights in retirement benefits created by the California Constitution, if a survivor benefit is payable to a surviving child of the Member for a limited period of time (such as until the child reaches the age of 22), the survivor benefit shall be treated as payable solely to the surviving Spouse of the Member.

**5. Period Certain RMD Annuity**

(a) Spouse is the Sole Beneficiary

If the Member's sole beneficiary is the Member's surviving Spouse in accordance with section 1.401(a)(9)-5(c)(2), and the form of distribution is a period certain with no life annuity, the period certain may not exceed the joint life and last survivor expectancy of the Member and Spouse as determined in accordance with the Joint and Last Survivor Table set forth in Treas. Reg. § 1.401(a)(9)-9(d), using the Member's and Spouse's ages as of the Member's and Spouse's birthdays in the calendar year that contains the Annuity Starting Date.

(b) Spouse is Not the Sole Beneficiary

When the Member's surviving Spouse is not the sole beneficiary then the period certain may not exceed the period established under the Uniform Lifetime Table in Treas. Reg. §1.401(a)(9)-9(c) for the calendar year that contains the Annuity Starting Date. If the Member is younger than the applicable age in that year, then the distribution period for the Member is the distribution period for the applicable age increased by the difference between the applicable age and the age of the Member in the year of the Annuity Starting Date. Also see below regarding Designated Beneficiaries.

For purposes of this paragraph, the "applicable age" is age 70. Effective January 1, 2020, the applicable age is age 72 for a Member born after June 30, 1949; effective January 1, 2023, the applicable age is age 73 for a Member born after December 31, 1950; and effective January 1, 2033, the applicable age is age 75 for a Member born after December 31, 1960.

(c) Rule Regarding Children of Member

Under a good faith interpretation of the Code as provided under Treas.

Reg. § 1.401(a)(9)-1(a)(3), and in accordance with Treas. Reg. § 1.401(a)(9)-6(p), and taking into account the vested rights in retirement benefits created by the California Constitution, the period certain distribution rules shall not apply to survivor benefits payable to children of the Member but the rules of Section V.C.4 above shall apply.

### **D. Distributions When Member Dies Before Benefits Begin**

If a Member dies before distributions begin, distributions after the death of the Member must meet the following requirements:

#### **1. When Distributions Must Begin**

##### **(a) Spouse is the Sole Designated Beneficiary**

If the Member's sole Designated Beneficiary is the Member's surviving Spouse, then, except as provided in Section V.D.1.e., distributions to the surviving Spouse must begin by December 31 of the calendar year immediately following the calendar year in which the Member died or, if later, by December 31 of the calendar year in which the Member would have reached age 70 ½ (effective January 1, 2020, age 72 for a Member born after June 30, 1949, effective January 1, 2023, age 73 for a Member born after December 31, 1950, and effective January 1, 2033, age 75 for a Member born after December 31, 1960).

##### **(b) Spouse is not the Sole Designated Beneficiary**

If the Member's sole Designated Beneficiary is not the Member's surviving Spouse, then, except as provided in Section V.D.1.e., distributions to the Designated Beneficiary must begin by December 31 of the calendar year immediately following the calendar year in which the Member died.

##### **(c) No Designated Beneficiary**

If there is no Designated Beneficiary as of September 30 of the year following the year of the Member's death, then distributions of the Member's entire interest must be completed by December 31 of the calendar year that contains the fifth anniversary of the Member's death.

##### **(d) Death of Surviving Spouse Who Is the Sole Designated Beneficiary**

If the Member's surviving Spouse is the Member's sole Designated Beneficiary and the surviving Spouse dies after the Member but before distributions to the surviving Spouse are required to begin, then this Section V.D.1., other than Section V.D.1.a., applies as if the surviving Spouse were the Member.

##### **(e) Election of Five Year Rule**

A Designated Beneficiary may elect, at the time and in the manner determined by SBCERA, to have the five year rule of Section V.D.1.c.

apply, but solely to the extent that the Designated Beneficiary may elect, under the CERL, a benefit which will be paid in the required time period.

### 2. **When Distributions Are Considered to Begin**

For purposes of this Section V.D.2., unless Section V.D.1.d. applies, distributions are considered to begin on the Member's Required Beginning Date. If Section V.D.1.d. applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section V.D.1.a. If distributions under an RMD Annuity meeting the requirements of this Policy commence to the Member before the Member's Required Beginning Date (or to the Member's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section V.D.1.a.), the date distributions are considered to begin is the date distributions actually commence.

### 3. **Length of Distribution Period**

#### (a) Member Is Survived by a Designated Beneficiary

If the Member is survived by a Designated Beneficiary, the Member's entire interest in SBCERA shall be distributed over the life of the Designated Beneficiary or over a period certain that does not exceed the period specified in Section V.D.3.b.

#### (b) Period Certain

The period certain in Section V.D.3.a. may not exceed the Designated Beneficiary's life expectancy determined using the Single Life Table in Treas. Reg. § 1.401(a)(9)-9(b). If the Annuity Starting Date is in the first Distribution Calendar Year, the life expectancy shall be determined using the Designated Beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death. If the Annuity Starting Date is before the first Distribution Calendar Year, then the life expectancy is determined using the Designated Beneficiary's age in the calendar year that contains the Annuity Starting Date.

#### (c) No Designated Beneficiary

If there is no Designated Beneficiary as of the September 30 of the year following the year of the Member's death, distribution of the Member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

#### (d) Death of Surviving Spouse Before Distributions To Spouse Begin

If the Member's surviving Spouse is the Member's sole Designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Section V.D.3. shall apply as if the surviving Spouse were the Member, except that the time that distributions are required to begin is determined without regard to Section V.D.1.a.

### E. RMD Annuity Payment Increases

RMD Annuity payments will either not increase over time or increase only as follows:

#### 1. Cost of Living Adjustments (COLA)

##### (a) Annual COLA Increases

RMD Annuity payments may increase by an annual percentage that does not exceed the percentage increase in an eligible cost-of-living index, as defined in of section 1.401(a)(9)-6(o)(2) of the Treasury regulations, for a 12-month period ending in the year during which the increase occurs or a prior year.

##### (b) Cumulative COLA Increases

RMD Annuity payments may increase by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index, as defined in the preceding paragraph since the Annuity Starting Date, or if later, the date of the most recent percentage increase.

##### (c) Additional COLA Increases

Under a good faith interpretation of the Code as provided under Treasury regulations section 1.401(a)(9)-1(a)(3), and in accordance with Treasury regulations section 1.401(a)(9)-6(o) and taking into account the vested rights in retirement benefits created by the California Constitution, RMD Annuity payments may increase by a percentage or amount that is determined by SBCERA, in accordance with the CERL, to represent an appropriate amount to take account of cost of living increases affecting retirees or beneficiaries.

#### 2. "Pop-Ups"

RMD Annuity Payments may increase to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the distribution period dies or is no longer the Member's beneficiary pursuant to a domestic relations order under applicable state law.

#### 3. Single Sum Distribution

RMD Annuity Payments may increase to the extent necessary to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Member's death under a good faith interpretation of the Code and Treasury regulations as provided under Treasury regulations section 1.401(a)(9)-1(a)(3), and section 1.401(a)(9)-6(o)(1)(vi) and taking into account the vested rights in retirement benefits created by the California Constitution, to allow a beneficiary to select a lump sum distribution of all or part of the Member's interest under SBCERA as provided in the CERL.

#### 4. **Plan Amendment**

Benefits may increase if they result from an amendment to, or interpretation of, the CERL, the California Government Code or any other applicable law governing benefits for Members or from an ordinance, resolution or regulation pursuant to such law.

#### 5. **Other Benefits**

Benefits may increase (i) to the extent increases are permitted in accordance with paragraph (3) or (4) of section 1.401(a)(9)-6(o) of the Treasury regulations dealing with additional permitted increases for annuity payments under annuity contracts purchased from an insurance company and additional permitted increases for annuity payments from a qualified trust; (ii) pursuant to Article 5.5 of the CERL dealing with the Supplemental Retiree Benefit Reserve; (iii) pursuant to Section 31691.1 of the CERL; and (iv) pursuant to sections 31681.1 et. seq., and 31739 et. seq. of the CERL.

#### **F. Additional Accruals After First Distribution Calendar Year**

Any additional benefits accruing to the Member in a calendar year after the first Distribution Calendar Year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.

#### **G. Domestic Relations Orders**

Under a good faith interpretation of the Code and Treasury regulations as provided under Treasury regulations section 1.401(a)(9)-1(a)(3), and section 1.401(a)(9)-8(d)(b)(2)(ii), and taking into account the vested rights in retirement benefits created by the California Constitution, if Article 8.4 of the CERL applies (relating to the establishment of separate accounts under domestic relations orders), then both the Member and the Member's former Spouse shall be deemed to be separate Members of the System for purposes of this Policy and section 401(a)(9) of the Code.

#### **H. Reciprocal Member**

Under a good faith interpretation of the Code as provided under Treasury regulations section 1.401(a)(9)-1(a)(3), and taking into account the vested rights in retirement benefits created by the California Constitution, if a deferred Member is a current employee and a member of another retirement system with which SBCERA has reciprocity under California law, then for purposes of determining the Required Beginning Date under SBCERA the Member shall be treated as a current employee of SBCERA and as such, as if he or she had not retired, even if he or she has attained age 70½ (effective January 1, 2020, age 72 for a Member born after June 30, 1949, effective January 1, 2023, age 73 for a Member born after December 31, 1950, and effective January 1, 2033, age 75 for a Member born after December 31, 1960).

#### **I. Public Safety Member Killed In Line of Duty**

Under a good faith interpretation of the Code as provided under Treasury regulations section 1.401(a)(9)-1(a)(3), and Treasury regulations section 1.401(a)(9)-6(b)(2)(ii) and (p), and taking into account the vested rights in retirement benefits created by the California Constitution, any additional retirement benefits paid under CERL section 31787.5 to the surviving Spouse of a

public safety Member killed in the line of duty shall not be limited by Code § 401(a)(9) because they shall be treated as incidental death benefits.

**J. Rollovers**

Amounts that are required minimum distributions cannot be rolled over to another qualified retirement plan or other tax-favored vehicle. The amount that cannot be rolled over shall be determined in accordance with Treas. Reg. § 1.402(c)-2(f).

**K. Payments to Surviving Child Treated as Made to Surviving Spouse**

Solely to the extent required by section 401(a)(9) of Title 26 of the Code and under a good faith interpretation of the Code as provided under Treas. Reg. § 1.401(a)(9)-1(a)(3), and in accordance with Treas. Reg. § 1.401(a)(9)-6, and taking into account the vested rights in retirement benefits created by the California Constitution, for purposes of Code § 401(a)(9) and this Policy, payments to a Member's surviving child in accordance with the requirements of § 1.401(a)(9)-6(p) of the Treasury regulations shall be treated as if such payments had been made to the Member's surviving Spouse to the extent the payments become payable to the surviving Spouse upon the child's attainment of the age of majority, as determined in accordance with the terms of the plan that satisfied Q&A-15 of section 1.401(a)(9)-6 of the Treas. Regulations as they appeared in the April 1, 2021 version of the Code of Federal Regulations, or upon the occurrence of such other event specified in Q&A-15 of section 1.401(a)(9)-6 of the Treasury regulations as they appeared in the April 1, 2021 version of the Code of Federal Regulations, or as otherwise specified in IRS guidance under section 401(a)(9) of the Code.

**L. Treatment of Trust Beneficiaries As Designated Beneficiaries.**

If a trust is properly named as a Member's beneficiary, the beneficiaries of the trust will be treated as the Designated Beneficiaries of the Member solely for purposes of determining the distribution period under this Section V with respect to the trust's interests in the Member's vested accrued benefit. The beneficiaries of a trust will be treated as Designated Beneficiaries for this purpose only if, during any period during which RMDs are being determined by treating the beneficiaries of the trust as Designated Beneficiaries, the following requirements are met:

1. the trust is a valid trust under state law, or would be but for the fact there is no corpus;
2. the trust is irrevocable or will, by its terms, become irrevocable upon the death of the Member;
3. the beneficiaries of the trust who are beneficiaries with respect to the trust's interests in the Member's vested accrued benefit are identifiable from the trust instrument; and
4. SBCERA receives the documentation described in Section M.1, below.

If the foregoing requirements are satisfied and SBCERA receives such additional information as it may request, SBCERA may treat such beneficiaries of the trust as Designated Beneficiaries.

**M. Special Rules Applicable to Trust Beneficiaries.**

### 1. Information That Must Be Supplied to SBCERA

#### (a) RMD Before Death Where Spouse Is Sole Beneficiary.

If a Member designates a trust as the beneficiary of his/her entire benefit and the Member's Spouse is the sole beneficiary of the trust, the Member must provide the information under (i) or (ii) below to satisfy the information requirements under Section V.L.4, above.

(i) The Member must provide to SBCERA a copy of the trust instrument and agree that if the trust instrument is amended at any time in the future, the Member will, within a reasonable time, provide to SBCERA a copy of each such amendment; or

(ii) The Member must:

(A) provide to SBCERA a list of all of the beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement sufficient to establish that the Spouse is the sole beneficiary) for purposes of Code § 401(a)(9);

(B) certify that, to the best of the Member's knowledge, the list under Section V.L.1.ii.A above is correct and complete and that the requirements of Section V. L. above are satisfied;

(C) agree that, if the trust instrument is amended at any time in the future, the Member will, within a reasonable time, provide to SBCERA corrected certifications to the extent that the amendment changes any information previously certified; and

(D) agree to provide a copy of the trust instrument to SBCERA upon demand.

### 2. RMD After Death.

In order to satisfy the documentation requirement of Section V.L.4 for RMDs after the death of the Member (or Spouse in a case to which U.S. Treas. Reg. § 1.401(a)(9)-3(e)(1) applies), the trustee of the trust must satisfy the requirements of subsection (a) or (b) by October 31 of the calendar year immediately following the calendar year in which the Member died.

(a) The trustee of the trust must:

(i) provide SBCERA with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) as of September 30 of the calendar year following the calendar year of the

Participant's death;

- (ii) certify that, to the best of the trustee's knowledge, the list in Section V.L.1.ii.A is correct and complete and that the requirements of V.L. above are satisfied; and
  - (iii) agree to provide a copy of the trust instrument to SBCERA upon demand.
- (b) The trustee of the trust must provide SBCERA with a copy of the actual trust document for the trust that is named as a beneficiary of the Member as of the Participant's date of death.

**3. Relief for Discrepancy.**

If RMDs are determined based on the information provided to SBCERA in certifications or trust instruments described in Section V.M.1 above, SBCERA will not fail to satisfy Code § 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to SBCERA, provided SBCERA reasonably relied on the information provided and the RMDs for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

**VI. INTERNAL REVENUE CODE SECTION 401(a): DISTRIBUTION RESTRICTIONS FOR RETURN TO WORK AND SEPARATION FROM SERVICE**

**A. Return to Work and Bona Fide Separation from Service**

In compliance with Government Code sections 31485.20 and 31485.21, for purposes of employment with the County of San Bernardino or a participating employer under SBCERA after retirement for service, a Member who has not attained Normal Retirement Age (as established by SBCERA) must have a bona fide separation from service as defined by Code section 401(a) prior to returning to work. If a member who has not attained normal retirement age returns to work without having a bona fide separation from service, his or her SBCERA retirement allowance shall be suspended and active participation in the retirement system shall be reinstated until a bona fide separation from service occurs. A bona fide separation from service is defined as follows:

- 1. Regardless of the length of Member's separation from service, the Member has not entered into any predetermined agreement (either written or unwritten) prior to retirement with the County or a participating employer under SBCERA to return to work after retirement.
- 2. Prior to entering into an agreement to return to employment with the County or a participating employer under SBCERA while retired, the Member must have a separation from service of at least the greater of (a) any required separation from service period required under the California Public Employees' Pension Reform Act of 2013 ("PEPRA") or (b) 60 calendar days.
- 3. The Member may be employed by the County or a participating employer under SBCERA prior to the time in sections 1 and 2 for emergency situations as defined

in California Government Code section 8558 and under the PEPRA return to work restrictions.

4. The Member must acknowledge in writing to SBCERA at the time of retirement that the Member has been informed of the requirements set forth in this Policy imposing limitations on post-retirement employment and that no prearrangement to be reemployed while retired exists. The Member must also agree that, if any of the provisions of this Policy regarding bona fide separation from service are violated as determined by the Board of Retirement, the Member's retirement allowance shall be suspended immediately and shall not be reinstated until the Member has a bona fide separation from service or reaches Normal Retirement Age as established by SBCERA, whichever occurs first.
5. This section VI is intended to supplement and be consistent with SBCERA Benefits Policy No. 032 (Retirees Returning to Work), and shall be construed in such a manner as is consistent with that intention.

**VII. INTERNAL REVENUE CODE SECTION 401(a): NORMAL RETIREMENT AGE**

**A.** For purposes of applying the Pension Protection Act of 2006 and complying with other applicable tax- related law, such as the in-service distribution rules, the "normal retirement age" for SBCERA members is described below.

1. Normal Retirement Age for general members who do not meet the definition of "new member" under California Government Code section 7522.04(f) is the earlier of (1) the age when a member completes 30 years of service; (2) when the member attains age 50 after completing at least 10 years of service; or (3) when the member attains age 70. This is in accordance with California Government Code section 31672 and the safe harbor provisions in Treasury Regulation Section 1.401(a)-1(b)(2)(ii), Proposed Treasury Regulation Section 1.401(a)-1(b)(2)(v)(B), (E), and (J) and a good faith interpretation of the application of the pre-ERISA vesting rules in accordance with Revenue Ruling 71-147.
2. Normal Retirement Age for safety members who do not meet the definition of "new member" under California Government Code section 7522.04(f) is the earlier of (1) the age when a member completes 20 years of service, (2) when the member attains age 50 and completes 10 years of continuous service, or (3) when the member attains age 70. This is in accordance with California Government Code sections 31672 and 31663.25 and the safe harbor provisions in Treasury Regulation Section 1.401(a)-1(b)(2)(v), Proposed Treasury Regulation Section 1.401(a)-1(b)(2)(v)(F), and (H).
3. Normal Retirement Age for general members who meet the definition of "new member" under California Government Code section 7522.04(f) is the earlier of ; (1) the year when the member attains age 52 after completing at least 5 years of service; or (2) age 70. This is in accordance with California Government Code sections 7522.20 and 31672.3 and safe harbor provisions in Treasury Regulation Section 1.401(a)-1(b)(2)(ii) and good faith interpretations of Proposed Treasury Regulation 1.401(a)-1 and the application of the pre-ERISA vesting rules in accordance with Revenue Ruling 71-147.

4. Normal Retirement Age for safety members who meet the definition of "new member" under California Government Code section 7522.04(f) is the earlier of (1) the year when the member attains age 50 after completing at least 5 years of service; or (2) age 70. This is in accordance with California Government Code sections 7522.25 and 31672.3, and safe harbor provisions in Treasury Regulation Section 1.401(a)-1(b)(2)(ii) and good faith interpretations of Proposed Treasury Regulation 1.401(a)-1 and the application of the pre-ERISA vesting rules in accordance with Revenue Ruling 71-147.
- B.** The normal retirement age for each class of membership (general and safety) is based on the average age at the time of retirement, as determined by SBCERA's actuary and has been determined by the Board to either meet safe harbors under the Treasury Regulations or to be reasonably representative of the typical retirement age for California public employees similarly situated. The Board may periodically review and change the normal retirement age of its members based on the criteria described Treasury Regulation 1.401(a)-1 and Proposed Treasury Regulation 1.401(a)-1 as deemed necessary by the Board, or to the extent required to comply with section 401(a) of Title 26 of the United States Code the Treasury Regulations, or other applicable law, or for any other reasons determined by the Board. The normal retirement age determined herein does not create any "vested rights" under California or federal law including but not limited to the contracts clause of the California Constitution.
  - C.** For purpose of this section VII of this Policy, "safety member" shall mean employees who, immediately prior to retirement, were employed as a safety member and were eligible for retirement allowance from SBCERA as a safety member pursuant to the County Employees' Retirement Law of 1937. "General member" shall mean all other SBCERA members.

**VIII. DEFINITIONS**

**A. Account**

"Account" means the separate Member account provided under SBCERA for benefits that are separate and apart from the retirement benefits (Annuity and pension) otherwise provided under the CERL.

**B. Affiliate**

Solely to the extent provided in the Code with respect to public agencies, the term "Affiliate" means all members of a controlled group of an Employer.

**C. Aggregated Plan**

"Aggregated Plan" means any defined contribution plan which is aggregated with SBCERA pursuant to Section II.F. of this Policy.

**D. Annual Additions**

"Annual Additions" means the sum of the following amounts credited to a Member's Account under SBCERA and any Aggregated Plans for the Limitation Year:

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1. Employer contributions allocated to the Member's Account that is separate and apart from any pension or Annuity benefits provided under the CERL;
2. Employee contributions (after-tax), including mandatory contributions (as defined in section 411(c)(2)(C) of the Code and Treasury regulations issued thereunder), as well as voluntary employee contributions used to purchase permissive service credit (as defined in Code section 415(n)(3)), to the extent such service credit purchase is not prohibited under PEPRA and those amounts are treated as Annual Additions in the year contributed pursuant to Code section 415(n)(1);
3. Forfeitures; and
4. Amounts allocated to the Member's individual medical account (within the meaning of section 415(l)(2) of the Code), which is part of a pension or Annuity plan maintained by the Employer or Affiliate, except that such amounts are not included in Annual Additions for purposes of applying the 100% of compensation limit.

The term "Annual Additions" excludes:

1. Repayments of cash-outs as described in Code section 415(k)(3) (for example, to purchase restoration of an accrued benefit that was lost when employee contributions were previously cashed out) for the Limitation Year in which the restoration occurs;
2. Catch-up contributions made in accordance with Code section 414(v);
3. Restorative payment described in Treasury regulations section 1.415(c)-1(b)(2)(ii)(C);
4. Excess deferrals that are distributed in accordance with Treasury regulations section 1.402(g)-1(e)(2) or (3);
5. Rollover contributions (as described in Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d) and 457(e)(16) of the Code);
6. Loan repayments;
7. Employee contributions to a qualified cost-of-living arrangement described in Code section 415(k)(2)(B);
8. Employee contributions picked up by the Employer under Code section 414(h)(2);
9. Make-up contributions attributable to a period of qualified military service, as defined in Code section 414(u), with respect to the year in which the contribution is made (but not with respect to the year to which the contribution relates); and
10. Employee contributions to purchase permissive service credit (as defined in Code section 415(n)(3)) to the extent such service credit purchase is allowed under PEPRA and the accrued benefit derived from all such contributions is treated as an annual benefit subject to the limits of Code section 415(b).

**E. Annual Benefit**

"Annual Benefit" means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided in Section II.A.5., where a benefit is payable in a form other than a Straight Life Annuity, the benefit shall be adjusted (solely for purposes of applying the limits of Code section 415 and of this Policy) pursuant to Section II.A.7. to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month.

**F. Annual Benefit Limit**

"Annual Benefit Limit" means the limit described in Section II.A.1. of this Policy.

**G. Annuity**

"Annuity" for purposes of Section II does **not** mean "annuity" as defined in the CERL but instead means a retirement benefit that is payable by SBCERA, as provided in section 415 of the Code.

**H. Annuity Starting Date**

"Annuity Starting Date" means the first day of the first period for which a retirement benefit is payable as an Annuity or, in the case of a retirement benefit not payable in the form of an Annuity, the first day on which all events have occurred which entitle the Member to payment under SBCERA.

**I. Applicable Interest Rate**

"Applicable Interest Rate" means the "applicable interest rate" defined in Code § 417(e)(3)(C) and shall be such rate of interest determined as of the first month preceding the stability period, which shall be the month containing the Annuity Starting Date for the distribution and for which the Applicable Interest Rate shall remain constant.

**J. Applicable Mortality Table**

"Applicable Mortality Table" means the "applicable mortality table" defined in Code § 417(e)(3)(B).

**K. Designated Beneficiary**

"Designated Beneficiary" means the individual who is designated by the Member (or the Member's surviving Spouse) as the beneficiary of the Member's interest under SBCERA and who is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the Treasury regulations. Accordingly, entities other than individuals, such as the Member's estate or a trust, cannot be a Designated Beneficiary of a Member's interest in SBCERA. However, the individuals who are beneficiaries under a designated trust shall be treated as Designated Beneficiaries for purposes of determining the distribution period under this Policy and Code section 401(a)(9) if all of the applicable requirements of Treasury regulation section 1.401(a)(9)-4(f)(2) are met. If all of such applicable requirements are not met, then the distribution of the Member's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

**L. Distribution Calendar Year**

"Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section V.A. of this Policy.

### **M. Eligible Individual**

An "Eligible Individual" means:

1. A Member who has terminated employment from the County of San Bernardino (or other agency covered by SBCERA) and who is eligible to withdraw his or her accumulated Member contributions under SBCERA;
2. A deceased Member's surviving Spouse;
3. A Member's or former Member's Spouse or former Spouse who is the alternate payee under a domestic relations order, as defined in Code § 414(p), with regard to the interest of the Spouse or former Spouse; and
4. A deceased Member's non-spouse beneficiary who is a "designated beneficiary" under Code § 401(a)(9)(E), subject to the non-spouse beneficiary provisions in Section IV.E.

### **N. Eligible Retirement Plan**

"Eligible Retirement Plan" means:

1. An annuity plan described in Code § 403(a);
2. An annuity contract described in Code § 403(b);
3. A governmental eligible deferred compensation plan described in Code § 457(b) that agrees to separately account for amounts transferred into such plan from SBCERA,
4. An individual retirement annuity described in Code § 408(a);
5. An individual retirement account described in Code § 408(b);
6. A Roth IRA described in Code § 408A; or
7. A qualified trust described in Code § 401(a) (including defined benefit pension plans and defined contribution plans such as 401(k) plans, profit sharing plans, and money purchase plans). An Eligible Retirement Plan does not include, and therefore, a rollover cannot be made to, a SIMPLE IRA or a Coverdell Education Savings Account.

### **O. Eligible Rollover Distribution**

"Eligible Rollover Distribution" is any distribution to an Eligible Individual of all or any portion of

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the amount credited to the Eligible Individual under SBCERA. These amounts may include (a) refunds of Member contributions plus accumulated interest, or (b) one-time lump sum death benefit payments.

An Eligible Rollover Distribution does not include the following kinds of payments:

1. Periodic Payments

Payments that are part of a series of substantially equal periodic payments (i) made at least once per year over the life (or life expectancy) of the Eligible Individual or the life (or life expectancy) of the Eligible Individual and his or her designated beneficiary, or (ii) made for a period of 10 years or more; or

2. Required Distributions

Payments that are "required minimum distributions" under Code §401(a)(9).

### **P. Employer**

"Employer" means the participating County or other governmental employer that participates or has participated in SBCERA and employs or employed the Member. The term "Employer" also includes any Affiliated Employer.

### **Q. Limitation Year**

"Limitation Year" means the calendar year.

### **R. Maximum Permissible Amount**

"Maximum Permissible Amount" means the lesser of:

1. \$40,000, as adjusted for increases in the cost-of-living under Code § 415(d); or
2. 100 percent of the Member's Total Compensation for the Limitation Year.

### **S. Required Beginning Date**

"Required Beginning Date" means April 1 of the calendar year following the later of the calendar year in which the Member attains or attained age 70 ½ (effective January 1, 2020, age 72 for a Member born after June 30, 1949, effective January 1, 2023, age 73 for a Member born after December 31, 1950, and effective January 1, 2033, age 75 for a Member born after December 31, 1960) or the calendar year in which the Member retires.

### **T. RMD Annuity**

"RMD Annuity" means, for purposes of the required minimum distribution rules in section 401(a)(9) of the Code, a distribution form providing for periodic payments for a specified period of time. "RMD Annuity" for purposes of this Policy does **not** mean "annuity" as defined in the CERL but instead means a retirement benefit that is payable by the Association.

### **U. RMD Annuity Start Date**

"RMD Annuity Starting Date" means the first day of the first period for which a retirement benefit is payable as an RMD Annuity or, in the case of a retirement benefit not payable in the form of an RMD Annuity, the first day on which all events have occurred which entitle the Member to payment.

### **V. Severance From Employment**

"Severance From Employment" means the Member ceases to be an employee of the Employer. A Member does not have a Severance From Employment if, in connection with a change of employment, the Member's new employer maintains SBCERA with respect to the Member.

### **W. Spouse**

Consistent with Federal tax rules, the term "Spouse" means the person to whom a Member is lawfully married under California law, including marriages recognized under California Family Code section 308 that were entered into in another jurisdiction (another state, the District of Columbia, a United States territory or a foreign jurisdiction). In accordance with Federal tax rules, the term "Spouse" does not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under the law of another jurisdiction that is not denominated as a marriage under the laws of that state (.

### **X. Straight Life Annuity**

"Straight Life Annuity" means an Annuity payable in equal installments for the life of the member and terminating on the Member's death.

### **Y. Total Compensation**

"Total Compensation" means all items of remuneration described in paragraph (1) and excludes all items of remuneration described in paragraph (2), below.

#### **1. Items Included**

Total Compensation includes all of the following items of remuneration for services:

- (a) A Member's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer and any Affiliate to the extent that the amounts are includible in gross income (or to the extent that amounts would have been includible in gross income but for an election under Code sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements, or other expense allowances under a non-accountable plan, as described in Treasury regulations section 1.62-2(c);
- (b) Amounts described in Code section 104(a)(3), 105(a), or 105(h), but only to the extent that these amounts are includible in the gross income of the Member;
- (c) Amounts paid or reimbursed by the Employer or an Affiliate for moving

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expenses incurred by a Member, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the Member under Code section 217;

- (d) The amount includible in the gross income of an Member upon making the election described in Code section 83(b);
- (e) Amounts that are includible in the gross income of a Member under the rules of Code section 409A or Code section 457(f)(1)(A), or because the amounts are constructively received by the Member; and
- (f) An amount that is excludable under Code section 106 that is not available to a Member in cash in lieu of group health coverage because the Member is unable to certify that he or she has other health coverage; provided, however, that the Employer does not request or collect information regarding the Member's other health coverage as part of the enrollment process for the health plan; and
- (g) Differential wage payments as defined in Code section 3401(h)(2).

### 2. Items Excluded

The following items are excluded from Total Compensation:

- (a) Employer contributions (other than elective contributions described in Code sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) to a deferred compensation plan (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent such contributions are not includable in the Member's gross income for the taxable year in which contributed, and any distributions (whether or not includable in gross income when distributed) from a deferred compensation plan (whether or not qualified) other than amounts received during the year by a Member pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income;
- (b) Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are excludable from the gross income of the Member, and are not salary reduction amounts that are described in Code section 125);
- (c) Other items of remuneration that are similar to any of the items listed in a and b, above.

### 3. Timing

- (a) In order to be taken into account for a Limitation Year, Total Compensation must be paid or made available (or, if earlier, includible in the gross income of the Member) during the Limitation Year. For this purpose, compensation is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code sections 125,

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132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).

- (b) In order to be taken into account for a Limitation Year, Total Compensation must be paid or treated as paid to the Member prior to the Member's Severance From Employment with the Employer; provided, however, that Total Compensation includes amounts paid to the Member by the later of 2½ months after Severance From Employment or the end of the Limitation Year if the amounts are regular compensation for services during the Member's regular working hours, compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation that absent a Severance From Employment would have been paid to the Member while the Member continued in employment with the Employer.
- (c) Total Compensation does not include amounts paid after Severance From Employment that are severance pay, unfunded nonqualified deferred compensation, or any other payment that is not described in the preceding paragraph, even if paid within 2½ months, except for:
  - (i) Payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service to the extent that these payments do not exceed the amounts that the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service; and
  - (ii) Payments to a Member who is permanently and totally disabled; provided, however that salary continuation applies to all Members who are permanently and totally disabled for a fixed or determinable period. For this purpose, a Member is permanently and totally disabled only if the Member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months.

#### 4. **Limit**

A Member's Total Compensation shall not include compensation in excess of the limitation of Code § 401(a)(17) that is in effect for the calendar year in which such Limitation Year begins.