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San Bernardino County Employees' Retirement Association

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Area Benefits  
Applicability SBCERA systemwide

## Felony Forfeiture of Benefits

### POLICY NO. 033

## I. PURPOSE AND SCOPE

This policy establishes SBCERA's process for administering pension benefit forfeiture in accordance with applicable law.

The Public Employees' Pension Reform Act of 2013 (PEPRA) added two felony forfeiture statutes applicable to all public employees as of January 1, 2013.

1. Government Code section 7522.72 applies to public employees who were first employed, appointed, or elected *before* January 1, 2013.
2. Government Code section 7522.74 applies to public employees who were first employed, appointed, or elected *on or after* January 1, 2013.

(Collectively, these statutes are referred to in this policy as the "Felony Forfeiture Statutes.")

For purposes of this policy, "Member" refers to any individual who is a member of SBCERA at the time of the conduct and conviction described herein. A "conviction" includes a guilty verdict, guilty plea, or plea of nolo contendere. The "date of conviction" is the date on which a guilty plea is entered or a verdict is rendered by a court of competent jurisdiction, regardless of any subsequent sentencing or modification of the conviction. The "earliest date of commission" refers to the earliest date on which the underlying felony conduct occurred, as determined by court records or other reliable documentation.

Both Felony Forfeiture Statutes provide that when a public employee (Member) is convicted on or after January 1, 2013 by a state or federal trial court of any felony under the law, it mandates forfeiture of benefits under the following circumstances:

- a. The felony arises out of, or in the performance of, the Member's official duties; in pursuit of the Member's office or appointment; or in connection with obtaining salary, disability retirement,

service retirement, or other benefits. (Gov. Code §§ 7522.72, subd. (b)(1) & 7522.74, subd. (b)(1).) The felony must have a direct connection to the Member's official duties, and conduct that is unrelated to the Member's employment does not trigger forfeiture under the Felony Forfeiture Statutes.

- b. The Member, whose official duties include contact with children, is convicted of a felony committed within the scope of those duties against or involving a child with whom the Member has contact as part of those duties. (Gov. Code §§ 7522.72, subd. (b)(2) & 7522.74, subd. (b)(2).)

If the Member is convicted of a felony as described above, the Member shall forfeit all accrued rights and benefits in any public retirement system of which he or she is a member of at the time the felony was committed.

The forfeiture of benefits is applied retroactively to the earliest date of commission of the felony, as defined in this policy.

Following forfeiture, the Member is prohibited from returning to employment that would result in membership in SBCERA and from accruing any additional SBCERA benefits. (Gov. Code §§ 7522.72, subd. (c)(1) & 7522.74, subd. (c)(1).)

The Felony Forfeiture Statutes require SBCERA to return any Member contributions made on or after the earliest date of the commission of the felony, as defined in this policy.

The return of contributions will only occur upon a qualifying distribution event, as described in Government Code sections 7522.72, subdivision (d)(3) and 7522.74, subdivision (d)(3).

## II. ROLES & RESPONSIBILITIES

1. The Member and the prosecuting agency are required by law to notify the employer who employed the Member at the time of the commission of the felony within 60 days of the felony conviction and provide the employer with all information required by the Felony Forfeiture Statutes. (Gov. Code §§ 7522.72, subd. (e)(1) & 7522.74, subd. (e)(1).)
2. The employer is required to notify SBCERA within 90 days of the Member's conviction. (Gov. Code §§ 7522.72, subd. (f) & 7522.74, subd. (f).) The employer shall provide sufficient information to identify the Member and the felony conviction and allow SBCERA to evaluate whether the Felony Forfeiture Statutes apply to the Member. This includes the following information, to the extent available:
  - a. Member's name and Social Security Number;
  - b. Termination date of employment;
  - c. Earliest date of commission of the felony;
  - d. The court(s) in which the case was heard;
  - e. The name and mailing address of the prosecuting agency (state and/or federal);
  - f. Copy of communication received from the prosecuting agency;
  - g. Description of the felony charges for which the Member was convicted;
  - h. Date of conviction;

- i. Copy of court documents related to the Member's conviction or guilty plea;
- j. Statement of whether the felony offense was committed during the conduct or performance of the Member's job duties, as described in Government Code sections 7522.72, subdivision (b)(1) and (2) and 7522.74, subdivision (b)(1) and (2).

The employer's determination regarding whether the felony was committed in connection with the Member's official duties is required for SBCERA to evaluate the applicability of the Felony Forfeiture Statutes.

If this information is not provided, SBCERA will request clarification from the employer and may be unable to complete its review or process related benefit applications until sufficient information is received.

3. Although the Felony Forfeiture Statutes require the employer to notify SBCERA of a Member's felony conviction, SBCERA may also receive notification from other sources, including the media, third parties, or the Member. In such cases, SBCERA will request the required information from the employer as outlined above.

### III. PROCEDURE

SBCERA does not determine criminal guilt. SBCERA relies on the final conviction of a court of competent jurisdiction and evaluates whether the conviction meets the criteria for forfeiture under the Felony Forfeiture Statutes and other applicable law. SBCERA's review is based on information provided by the employer, court records, and any other reliable documentation.

Upon receipt of notification from any source of a felony conviction of a SBCERA Member, but before the benefits are adjusted in accordance with the Felony Forfeiture Statutes, the Chief Executive Officer (CEO) or designee will investigate and analyze the matter in consultation with Chief Counsel or designee and determine whether the conviction triggers forfeiture under the Felony Forfeiture Statutes and/or other applicable law.

The investigation will be based on felony conviction information received from the employer, as outlined in Section II(2), and any additional information the CEO or designee and Chief Counsel or designee determine is necessary to fulfill SBCERA's obligation under the Felony Forfeiture Statutes. The SBCERA Board of Retirement (Board) may exercise its subpoena power (Gov. Code § 31535) for this purpose.

If the CEO, in consultation with Chief Counsel, determines that a Member's felony conviction meets the criteria for forfeiture under one of the Felony Forfeiture Statutes, SBCERA will provide written notification to the Member that includes the following:

- i. The applicable Felony Forfeiture Statute;
- ii. The earliest date of commission and the date of conviction;
- iii. Documentation supporting the determination;
- iv. An explanation of how forfeiture is calculated;
- v. The effective date of the changes to the Member's benefit; and,
- vi. Notice of the Member's right to appeal and the timeframe to do so, in which the SBCERA Board

will decide the matter.

Changes and adjustments to the Member's benefit, including collection of overpayments, will occur no later than 31 days after the time for the Member to appeal has lapsed, or as soon thereafter as administratively feasible based on the specific facts of the case.

However, the disbursement of contributions will only occur upon a qualifying distribution event, as described in Government Code sections 7522.72, subdivision (d)(3) and 7522.74, subdivision (d)(3). If contributions are returned to the Member as a result of the applicability of the Felony Forfeiture Statutes and upon a qualifying distribution event, SBCERA will notify the court and the district attorney at least three (3) business days before disbursement of funds. (Gov. Code §§ 7522.72, subd. (d)(2) & 7522.74, subd. (d)(2)).

The notice to the Member will include a copy of this policy.

### IV. APPEAL

The Member may appeal the CEO's determination as specified in Section III of this policy. Appeals shall be conducted in accordance with SBCERA Benefits Policy No. 025 (Requests and Appeals for Pension Benefits), except as otherwise provided herein.

The Member has 60 days from the date of the CEO's written notification to submit an appeal to the SBCERA Board. If the Member does not submit an appeal within this timeframe, SBCERA will proceed with changes and adjustments to the Member's benefit as described in this policy and required by the Felony Forfeiture Statutes.

An appeal may include challenges to the applicability of the Felony Forfeiture Statutes, the determination that the conviction triggers forfeiture, and the calculation or effective date of the forfeiture.

If an appeal is submitted, the matter will be scheduled for determination by the SBCERA Board at a regularly scheduled meeting. Both SBCERA and the Member will have the opportunity to present evidence. All evidence must be submitted no later than 14 days prior to the scheduled hearing date, unless otherwise permitted by the Board.

At the hearing, SBCERA will present its analysis and recommendation. The Member, and their legal representative if applicable, will be provided the opportunity to present evidence and argument to the SBCERA Board.

Following consideration of the evidence, the SBCERA Board will take action based on the record presented. The Board's decision is final for administrative purposes as of the date the Board takes action on the matter. Judicial review of the Board's decision shall be subject to Code of Civil Procedure 1094.6.

Following the Board's decision, the CEO or designee shall send written notice of the outcome to the Member.

## Approval Signatures

Step Description	Approver	Date
HR Final Review & Distribution	Iliana Carreon	3/30/2023

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## Applicability

SBCERA, SBCERA Internal

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