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**POLICY NO.** 021  
**Committee:** Admin Committee

**Issue No.** 4-02.0  
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**Approved.**

By: \_\_\_\_\_  
Chairman of the Board

**Subject: DISTRIBUTION RESTRICTIONS**

### DISTRIBUTION RESTRICTIONS

#### **Internal Revenue Code Section 401(a) Return To Work And Separation From Service**

##### **SECTION I. PURPOSE AND SCOPE**

In accordance with California Government Code section 31485-, the rules set forth in this Policy are restated effective ~~as of August 6, 2015~~ [Insert Effective Date], and reaffirm, ~~and clarify~~ and update the existing practices of the San Bernardino County Employees' Retirement Association ("SBCERA") with respect to the return to work of retired Members ~~and a bona fide separation from service prior to such return to work applicable for SBCERA~~ in accordance with the Internal Revenue Code (the "Code") and the applicable underlying Treasury Regulations ("Treas. Regs.").

~~For this Policy, Code includes the United States Department of the Treasury (Treasury) regulations issued under the Code.~~

~~This Policy is intended to be in accordance with the Code and the applicable Treasury regulations.~~ To the extent there is a conflict between this Policy and the Code ~~and Treasury regulations~~, the applicable federal law will govern.

~~SBCERA may establish any reasonable procedures dealing with the return to work of Members following retirement under SBCERA and the requirement for a bona fide separation of service that it deems necessary or desirable for complying with applicable tax laws or for administrative purposes.~~

Terms defined in the County Employees' Retirement Law of 1937 (the "CERL") apply here unless otherwise stated.

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### SECTION II. RETURN TO WORK AND BONA FIDE SEPARATION FROM SERVICE

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) ~~shall~~ must have a bona fide separation from service ~~to the extent required as defined by Code section 401(a) prior to returning to work of Title 26 of the Code. 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, t~~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 ~~prior to retirement~~ to return to work after retirement; ~~regardless of the length of the separation.~~
2. Prior to entering into an agreement to return ~~or returning~~ 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 prior to return to work required under ~~the terms of~~ the California Public Employees' Pension Reform Act of 2013 ("PEPRA") or (b) ~~a 60 calendar days~~ s separation from service.
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.

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**POLICY: Distribution Restrictions**  
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5. This Policy is intended to ~~be~~ supplement and be consistent with SBCERA Administration Policy No. 015 (Retirees Returning to Work), and shall be construed in such a manner as is consistent with that intention.