

Subject: COMPENSATION LIMIT

COMPENSATION LIMIT

**INTERNAL REVENUE CODE SECTION 401(a)(17)
COMPENSATION LIMIT**

SECTION I. PURPOSE AND SCOPE

In accordance with California Government Code section 31671, the rules set forth in this Policy are effective as of August 6, 2015, and reaffirm and clarify the existing practices of the San Bernardino County Employees' Retirement Association (SBCERA) with respect to the limit on annual compensation under section 401(a)(17) of the Internal Revenue Code (the "Code"). For this Policy, the Code includes United States Department of the Treasury (Treasury) regulations issued under section 401(a)(17).

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 reasonable procedures for complying with the limit on annual compensation under section 401(a)(17) of the Code that it deems necessary or desirable to comply 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.

SECTION II. LIMITATION ON ANNUAL COMPENSATION EARNABLE

A. In General

1. Annual Compensation Earnable Limit

The annual amount of compensation that is taken into account in determining all benefits provided by SBCERA to affected Members for any year, which is referred to in the CERL and in this Policy as "Compensation Earnable", shall in no event be greater than the amount allowed by Code section 401(a)(17), \$200,000 adjusted in accordance with the Code for increases in the cost of living.. This limit is called the Annual Compensation Earnable Limit in this Policy. (Certain Members may also be subject to the limitation on "Pensionable Compensation")

under Government Code Section 7522.10(c) and (d) which would produce a lower limit than the limit under section 401(a)(17) of the Code.)

2. Members Affected By the Annual Limit

a. Not Applicable to Pre-July 1, 1996 for SBCERA Members

The Annual Compensation Earnable Limit does not apply to any individual who first became a Member of the Association prior to July 1, 1996.

b. Applies to New Members of the Association On and After July 1, 1996

In accordance with California Government Code section 31671, the Annual Compensation Earnable 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'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. Operational Rules, In General

This section applies to Members who are not grandfathered under section A,2,a.

1. Limited Compensation Earnable

All Compensation Earnable that would be taken into account for determining benefits provided by SBCERA without regard to this Policy is subject to the Annual Compensation Earnable Limit. Such Compensation Earnable is not limited to salary or to base salary.

2. Benefits Affected by the Limit

The Annual Compensation Earnable 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 from More Than One Employer

If Compensation Earnable from more than one employer that participates in SBCERA is taken into account in determining a Member's benefits, the Annual Compensation Earnable Limit shall apply separately to the Compensation Earnable from each employer. For example, if the Compensation Earnable Limit is \$260,000 for the year and the Member has Compensation Earnable of \$200,000 from one participating employer and \$100,000 from another participating employer, the unproduced total Compensation Earnable from each employer may be taken into account. The Annual Compensation Earnable Limit does not apply to the aggregate of Compensation Earnable earned from all employers that participate in the Association.

4. Proration for Short Plan Year

If a plan year consists of fewer than 12 months, the Annual Compensation Earnable Limit is an amount equal to the otherwise applicable Annual Compensation Earnable 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 this Policy. Membership before July 1, 1996 in another retirement plan with which SBCERA has reciprocity does not create pre-July 1, 1996 SBCERA membership for purposes of the Annual Compensation Earnable Limit.

6. Reciprocity and Prior Membership In the Association

A person who was a grandfathered Member of SBCERA prior to July 1, 1996 under section A.2.a, who terminated employment with an employer that participated in SBCERA, remains a Member of SBCERA prior to July 1, 1996. Therefore, if the Member established reciprocity between another public sector retirement plan and SBCERA, any higher 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 Compensation Earnable Limit.

7. Relationship Between Internal Revenue Code Section 415 Limit and Compensation Earnable 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 Compensation Earnable 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 Compensation Earnable Limit may not apply. Also, both of these limits may apply to the same Member.

8. Clarification Concerning Member Contributions

Because Member contributions are the basis for benefits provided by SBCERA, Member contributions shall not be made by taking into account Compensation Earnable in excess of the Annual Compensation Earnable Limit. To the extent the provisions of the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), including Government Code Section 7522.10(h) 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 for any prior plan year is taken into account in determining a Member's benefits for the current plan year, the Compensation Earnable for such prior plan year is subject to the applicable Annual Compensation Earnable Limit in effect for that prior plan year. In addition, in determining benefits for plan years beginning on or after January 1, 2002, the Annual Compensation Earnable Limit in effect for plan years beginning before that date is \$200,000.

SECTION III. PLAN YEAR AND COST OF LIVING ADJUSTMENTS

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

The Annual Compensation Earnable Limit may be adjusted annually by the Internal Revenue Service for cost of living changes in accordance with the Code.

B. General Rule--Application of Limit to a Plan Year

In general, the Annual Compensation Earnable Limit is applied to the Compensation Earnable for the plan year on which accruals of benefits from SBCERA are based.

C. Plan Year Compensation Earnable**1. General Rule**

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

2. Member Contributions

Since SBCERA's plan year is the fiscal year beginning on the first day of July, Compensation Earnable used to determine Member contributions for each plan year shall be limited to the Annual Compensation Earnable Limit in effect as of January 1 of the calendar year in which the plan year begins.

D. Examples**1. Example - Retirement Allowance**

The retirement allowance provided by SBCERA for certain Members is based on the highest 12 consecutive months of Compensation Earnable ending within the plan year. The Annual Compensation Earnable Limit was \$250,000 for the 2012 calendar year and \$255,000 for the 2013 calendar year. A Member retires in May, 2013. The Member's highest 12 consecutive months of Compensation Earnable is for the period May 1, 2012 through April 30, 2013. The annual Compensation Earnable used for determining this Member's benefits for the 2013 year is limited to \$250,000, not \$255,000, because this is the limit in effect for the calendar year in which the 12-consecutive month period began.

For some Members of SBCERA, including Members subject to the requirements enacted under the "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 Compensation Earnable Limit was \$245,000 for 2011, \$250,000 for 2012, and \$255,000 for 2013. A Member retires in May 2014. The Member has \$300,000 per year (\$25,000 per month) of Compensation Earnable during the Member's highest 36 consecutive months of Compensation Earnable for the period May 1, 2011 through April 30, 2014. The Association may not base the Member's benefits for 2014 on annual Compensation Earnable in excess of \$250,000, the average of the limits in effect for each of the three 12-consecutive month periods: the May 1, 2011 through April 30, 2012 period is capped at \$245,000, the 2011 limit; the May 1, 2012 through April 30, 2013 is capped at \$250,000, the 2012 limit; and the May 1, 2013 through April 30, 2014 is capped at \$255,000, the 2013 limit. The average of these capped amounts is the Annual Compensation Earnable Limit for determining benefits for the 2014 plan year for a member who retires in May, 2014 because that is the limit for the calendar year in which the member's average compensation earnable begins.

2. Example: Member Contributions

The refund or withdrawal benefits from Member contributions are accrued on an annual basis. The Annual Compensation Earnable Limit was \$245,000 for the 2011 calendar year, \$250,000 for the 2012 calendar year; and \$255,000 for the 2013 calendar year. Although SBCERA's plan year for other purposes runs from July 1 to the following June 30, SBCERA applies the compensation limits addressed in this policy on a calendar year basis.