

## **FELONY FORFEITURE**

### **I. PURPOSE**

Pursuant to Government Code sections 7522.72 and 7522.74, a member of the Sonoma County Employees' Retirement System ("SCERA") who is convicted of a felony arising out of or in the performance of his or her official duties, in pursuit of an office or appointment, or in connection with obtaining salary, disability retirement, or other benefits may not accrue pension benefits from the date of first commission of the felony to the date of conviction. In most cases, a conviction will result in a forfeiture of accrued pension benefits and a possible refund of member contributions collected by SCERA during the period the felony was committed.

This policy sets forth the process by which SCERA and the Board of Retirement will evaluate and implement the felony forfeiture statutes while providing the member with the opportunity to be heard.

### **II. PROCEDURE**

- A. From time to time SCERA may learn that a member has been convicted of one or more felonies. Regardless of how SCERA learns about a member's felony conviction, SCERA staff will investigate the matter to determine the extent of any retirement benefit forfeiture required by law.
- B. Among the information that SCERA staff will obtain will be the criminal court record, evidence of the commission of the criminal acts, the judgment of conviction, and any other information SCERA staff believes is appropriate and relevant in order to assist the Board of Retirement in discharging its obligation to make the determinations required by Government Code sections 7522.72 and 7522.74. SCERA may exercise its subpoena power (*see* Govt. Code sec. 31535) for this purpose. Staff is not limited to the criminal record in gathering the information it believes appropriate and relevant for the Board's determination.
- C. The purpose of staff's investigation is to assist the Board in the following:
  - 1. Establishing the earliest date of the commission of the felony and the felony conviction date;
  - 2. Establishing whether the felony arose out of or in the performance of the member's official duties, in pursuit of the office or appointment; in

connection with obtaining salary, disability retirement, service retirement, or other benefits; or was committed within the scope of the member's official duties against or involving a child who he or she has contact with as part of his or her official duties; and

3. Calculating the amount of overpaid benefits, member contributions to be credited to the member, the appropriate adjustment to future benefits due to the member, and the method and timing of any recovery of overpayments due from the member.

D. If the member is active or deferred:

1. SCERA will determine the amount of service credit earned from the date of first commission of the subject felony to the date of conviction. SCERA will then remove from the member's account any service credit earned between the date of first commission and the date of conviction. SCERA will determine the amount of member contributions attributable to the removed service credit. No interest will be credited on the contributions attributable to the removed service credit.
2. The member will be treated as if he or she had become a deferred member on the date of first commission of the subject felony for all purposes, including but not limited to retirement eligibility.
3. Member contributions due to the member will be refunded to the member.

E. If the member is retired:

1. SCERA will review the member's account to determine the member's service credit and final average compensation ("FAC") as if the member deferred as of the date of the first commission of the subject felony.
2. SCERA will then determine whether the member had sufficient service credit to retire as of the date of first commission of the subject felony. If not, SCERA will rescind the retirement and place the member into deferred status until the member has sufficient eligible service to qualify for retirement.
3. If the member did have sufficient eligible service to retire as of the date of first commission of the felony, SCERA will recalculate the member's retirement allowance based on the deferral date by making appropriate changes to service credit and FAC.

4. If the recalculated retirement allowance results in an overpayment of retirement benefits by SCERA, SCERA will seek to recoup the overpayment from the member pursuant to this Procedure.
  5. SCERA will also determine the amount of contributions made by the member from the date of first commission of the felony to the date of conviction. These member contributions will be refunded to the member without interest; provided, however, that where there has been an overpayment by SCERA, SCERA will use the contribution refund, without interest, as an offset to the overpayment and only refund the amount by which the contributions exceed the amount of the overpayment (see Govt. Code section 7522.72(d)(1)).
  6. For purposes of this Procedure, "overpayment" includes compounded interest on the principal amount of any such overpayment at SCERA's actuarial assumed rate of return effective during the forfeiture period.
- F. Following SCERA staff determination of the foregoing information, staff shall notify the member in writing of the following:
1. SCERA has been advised of the conviction by the member's employer or by the member;
  2. SCERA has determined the date of first commission of the felony and what that date is;
  3. SCERA has determined that the felony was or was not job related within the meaning of the relevant statutes;
  4. If applicable, SCERA has calculated the overpayment of benefits paid to the member, the contributions made to SCERA after the date of first commission of the felony through the conviction date, and any monthly adjustment in benefits going forward;
  5. The manner and time in which SCERA will recover any overpaid benefits due from the member;
  6. And that SCERA will make the changes effective on a date not less than sixty (60) days nor more than ninety (90) days (the "Effective Date") following the date of the notice. The notice will include a copy of this Procedure.
- G. SCERA Staff may seek Board determination or direction on any matter referred to in Section F, subsections 3, 4, and 5 of this Procedure before sending the notice to the member.

- H. Notwithstanding paragraph F.6., the member shall have the right to request that the matter be heard and determined by the Board, in accordance with the Benefits Appeals Policy, section III.D. The Benefit Appeals Policy, section III.D, requires that the member send a written request for the matter to be heard by the Board no later than sixty (60) days after SCERA sends notice of a benefit determination. The notice referenced in section II.F of this policy is notice of a benefit determination. Once SCERA receives a written request from the member, the matter will be placed on the Board's next regular open meeting agenda. If a request is not received by SCERA at least sixty (60) days after the notice is sent, the member waives his or her right to request that the matter be heard and determined by the Board and the decision will be final.

Both the member and SCERA staff shall have the opportunity to submit to the Board written evidence, sworn testimony and argument relevant to the matters under consideration. All written submissions shall be delivered to the Board and the other party at least fourteen (14) days before the date of the Board meeting. At the time of the Board meeting, the member and SCERA staff may present written evidence, sworn testimony and argument and may be represented by counsel. At the conclusion of the presentations, the Board will take action as it determines appropriate. SCERA shall notify the member in writing of the Board's determination within three (3) business days following the determination. Presentations and Board deliberations described in this section may be in closed session at the request of the member, SCERA staff, or the Board.

- I. Pending the finality of (a) SCERA' staff determination if the member does not request to be heard by the Board, or (b) the Board's determination if the member timely requests a Board determination, SCERA will not implement any changes, seek to recover any overpayments, refund any contributions or adjust any future monthly benefits of the member. Such changes, recovery of overpayments, refunds and adjustments shall be made at the earliest practicable time, as determined by SCERA staff, unless otherwise directed by the Board. In the exercise of its discretion, SCERA may recover amounts due from the member and the member's estate by lump sum payment, installment payment, benefit reduction, any combination thereof, or in any other manner satisfactory to SCERA.
- J. At least three (3) business days prior to payment of any refund of member contributions, SCERA will notify the court and the District Attorney's Office or other prosecuting authority of any contribution refund payments SCERA will be making to the member.

- K. In making any determinations under this Procedure, the Board may appoint one of its members or a referee to make findings and recommendations (see Govt. Code section 31533). In this instance, the Board shall then proceed as described in Government Code section 31534 and in accordance with SCERA's Administrative Hearing Rules and Procedures.
- L. The member has the right to challenge SCERA's administrative determination under the writ procedures set forth in the California Code of Civil Procedure section 1094.5. A member's filing of a writ challenging SCERA's final administrative determination shall not prevent SCERA from implementing its determination, unless a court orders otherwise.
- M. This Procedure shall not be subject to SCERA's Correction of Contribution Collection Errors or Correction of Benefit Payment Errors policies.
- N. This Procedure shall apply to any member convicted of a felony on or after January 1, 2013 regardless of the date of first commission of the felony.
- O. If this Procedure conflicts with any statutory or case law, the statutory or case law shall govern.
- P. If a public employee's conviction is reversed and that decision is final, the employee shall be entitled to recover forfeited rights and benefits as adjusted for the contributions received under section E.5 of this policy. The employee may also redeposit those contributions and interest that would have accrued during the forfeited period, as determined by the system actuary, and then recover the full amount of the forfeited rights and benefits.

### III. REVIEW

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

### IV. HISTORY

The Board adopted this policy on 01/24/2019.

The Board reviewed and revised this policy on 2/17/2022. The Board reviewed this policy on 1/23/2025.