



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 14

MEETING DATE: February 15, 2023

SUBJECT: *Alameda Corrections*

SUBMITTED FOR: ___ Consent X **Deliberation and Action** ___ **Receive and File**

RECOMMENDATION

Amend the September 16, 2020 *Alameda* Board Order and direct staff to refrain from recouping overpaid benefit amounts that occurred on or after the August 31, 2020, payroll.

PURPOSE

This item supports the Strategic Management Plan by providing transparent communication to stakeholders regarding the standards by which SCERS administers the retirement plan. This item also furthers the funding integrity and sustainability objectives of the Strategic Management Plan to ensure the accuracy of and to protect plan assets.

BACKGROUND

On July 30, 2020, the California Supreme Court issued its landmark decision rejecting various constitutional challenges to the Public Employees' Pension Reform Act (PEPRA). *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn.*, 9 Cal.5th 1032 (2020) ("*Alameda*").

Following the decision, the SCERS Board held public meetings, notified members regarding the potential impact to their pensions, and took steps to bring SCERS into compliance with the ruling. On September 16, 2020, the Board issued an order calling for various pay items to be excluded from the "compensation earnable" and "pensionable compensation" of all members that retired, or will retire, after January 1, 2013 (the PEPRA effective date). Specifically, the Order directed Staff to make various retroactive and prospective corrections for the purpose of putting the system and the members in the same general position they would have been in had the pay items been excluded as of January 1, 2013. The Board materials from September 2020 can be found [here](#).

SCERS has now completed or is nearing completion on the following activities related to the “*Alameda Corrections*”:

- Obtained and evaluated Sacramento County payroll data to identify affected SCERS members.
- Helped facilitate modification of the County’s payroll system for the employer to cease taking retirement contributions on the newly excluded pay items, and coordinated with employers to amend vacation cash-in policies to eliminate “straddling” across calendar years.
- Refunded overpaid retirement contributions to active and deferred members. Through December 31, 2022, SCERS processed 3,447 refunds, amounting to \$2,491,831, with an average refund of \$723 and a median refund of \$70. SCERS also help facilitate roll-overs to tax-qualified retirement plans, such as a 457 or 401(k).
- Refunded overpaid contributions to members who retired following the July 2020 Court decision. Those members had compensation and contribution records reviewed as part of the retirement process, with excluded items removed on a flow basis to accurately reflect the correct pension calculation. Through December 31, 2022, SCERS processed 468 refunds (including roll-overs) for retirees amounting to \$459,477, with an average refund of \$982 and a median refund of \$70.
- Updated the SCERS active member database to ensure that when members apply for retirement, any *Alameda*-excluded pay items will have been removed from their compensation and contribution records, which will help facilitate processing when those members ultimately retire.
- Notified 486 of 1,507 impacted retirees that their pensions have been recalculated and will be adjusted on the March 31, 2023 pay date. The average monthly reduction is \$49.30 and the median monthly reduction is \$1.57.
- Provided regular notices and updates to members through various methods, including certified mail, regular mail, email, SCERS newsletters, the SCERS website, and the County intranet site.
- Defended a legal challenge in Sacramento Superior Court to SCERS’ authority to implement the *Alameda* corrections regarding the exclusion of animal allowance.

DISCUSSION

SCERS has worked diligently on the correction effort since the July 2020 Court decision. The scope and complexity of this effort has been greater than anticipated and SCERS is many months from substantially completing this effort. Nearly 20% of SCERS’ entire membership is impacted, and SCERS has needed to engage the services of two of its vendors on the Pension Administration System project to assist staff in this effort.

The data analysis has been extensive and involves adjusting biweekly payroll data going back to 2013. This analysis also requires SCERS to track overpaid contributions on specific pay items, apply interest, and for retirees, to recalculate retirement allowances and overpaid benefits through a mix of automated and manual processes. The effort is complicated by the ongoing transition to a new Pension Administration System. Because the SCERS technology implementation is occurring in phases, the *Alameda* corrections require a time-consuming process to map and bridge the adjustments between the new system and the legacy system.

The progress made to date has been significant. The active and deferred member corrections are largely complete. However, there is significant work left to complete 1,021 retiree corrections.

Many of the retiree adjustments cannot be automatically re-calculated and will require a manual review for special populations, such as divorced members with split accounts, disability retirement benefits, and survivor benefits for deceased members. Furthermore, additional effort is required to identify and review records of members who separated employment before January 1, 2013, but deferred retirement until after January 1, 2013 and are subject to the *Alameda* limitations.

For a retirement system that typically processes 600-700 retirements a year, recalculating more than an additional year's worth of retirements has added considerable strain on staff capacity.

Under the correction plan as adopted by the Board, SCERS is to recover overpaid benefits paid to retirees since August 2020. Every month that goes by before the correction is completed adds an additional month of overpayments and interest that the retiree owes to SCERS. Some 2-½ years since the *Alameda* decision, the retiree is bearing the financial risk and uncertainty of the prolonged time to complete a complex administrative correction process for which they have no control.

Proposed Change to Board Order

There is urgency to complete the "*Alameda* Corrections" in an administratively prudent and cost effective manner that does not add additional harm to members, and minimizes risk of further interrupting regular business operations for SCERS.

The original plan called for recovering overpaid benefit payments from retirees that were paid **after** the July 2020 Court decision. (Under the Board order, overpayments made since January 1, 2013 but **before** the Court decision were not to be recovered through the members but reconciled through the actuarial valuation process as an employer liability.) This concept was based on the assumption that corrections could be made relatively quickly and would limit the harm on members, and it was the approach adopted and implemented by other county retirement systems facing *Alameda* corrections.

SCERS has been unique among other county retirement systems due to its larger volume of *Alameda* corrections and other administrative challenges. Staff now recommends amending the previous approach and not recover overpaid benefits directly from retirees for *Alameda* corrections, whether before or after the Court decision.

To be clear, SCERS will still recalculate and adjust the pensions of affected retirees to exclude pay elements as soon as practically possible. Additionally, any overpaid benefit will still be recognized and accounted for in the actuarial valuation as an employer liability and corrected in that manner, consistent with IRS guidance. As directed under the September 2020 Board Order, SCERS will also continue to reconcile overpaid contributions the employee made during his or her working years against overpaid benefits the retiree has received. Because the overpaid benefits are likely to exceed the overpaid contributions (with interest applied to both for purposes of this calculation), it is likely few retirees will receive a contribution refund, though it is possible.

This approach also is consistent with recent changes in state and federal government that are intended to avoid recovering overpaid benefits from retirees due to administrative errors in pension plans.

At the state level, legislation was signed into law in 2021 for CalPERS (SB 278) and in 2022 for CalSTRS (AB 1667) that affirm the responsibility of those retirement systems to correct errors and apply corrections to members but directs those systems to not recover overpayments from members due to corrections that were not the fault of the member. A related bill, AB 2493, was considered by the Legislature last year and would have applied to County retirement systems; however, the language of the bill was problematic and interfered with the court direction to implement the *Alameda* corrections. Though SCERS and other county retirement systems opposed the bill largely due to technical, administrative issues, the broader policy intent is likely to reappear in future legislation.

In addition, California case law support a retirement board's discretionary determination that, when the totality of circumstances so warrant, it need not recoup all amounts it has overpaid to retirees directly from them, and such amounts may be returned to the retirement system through employer payments on the unfunded actuarial accrued liability. See *City of Oakland v. Oakland Police and Fire Retirement System* (2014) 224 Cal.App.4th 210; *In Re Retirement Cases, supra*, 110 Cal.App.4th 426.

Further, Congress passed the SECURE 2.0 Act in late 2022, which included restrictions on recovering overpaid benefits from retirees in private-sector ERISA pension plans under certain circumstances. Though SCERS is not an ERISA plan, the policy direction at the state and federal level is clearly moving away from recovering overpaid benefits from retirees as a matter of fairness.

Fiscal impact

Because the *Alameda* decision effectively reduces current and future pension amounts, total pension liabilities will decrease by an unknown amount though it will likely be in the millions of dollars in aggregate. The overall savings will be offset to some extent by an increase in the unfunded liability due to recognizing the overpaid benefits through the valuation process.

Though SCERS' actuaries do not yet have all the necessary data to calculate the actuarial impact, the result is expected to be immaterial to the funded status of the \$12 billion pension trust, and will likely have a minimal impact on contribution rates. The median overpayment

potentially due to SCERS for the first group of nearly 500 retirees being processed is \$62, an amount covering 2½ years of overpaid benefits, which reflects modest adjustments for most of the impacted population.

ATTACHMENT

- Board Order

Prepared by:

/S/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

Before the Board of Retirement
February 15, 2023

Board Item:

Alameda Corrections

THE BOARD OF RETIREMENT hereby approves Staff's recommendation to amend Paragraph 6 of the September 16, 2020, Board Order (Agenda Item 4: Implementation of Supreme Court Decision) to read:

6. For Retired Members who retired on or after January 1, 2013, Staff shall:

a. Adjust retirement allowances for members who retired on or after January 1, 2013 to reflect the New Exclusions, beginning with the August 31, 2020 retiree payroll. (For the avoidance of doubt, this population includes members whose retirement occurs on or after January 1, 2013 but whose Final Compensation period wholly or partially predates January 1, 2013.)

b. With respect to benefit overpayments that occurred prior to the August 31, 2020 payroll, refrain from recouping those amounts from retirees unless ordered to do so by the Internal Revenue Service and/or a final, non-appealable, order of a court of competent jurisdiction; SCERS will correct the overpayments by reconciling employer contributions through the actuarial valuation process.

c. **With respect to benefit overpayments that occurred on or after the August 31, 2020 payroll, refrain from recouping those amounts from retirees unless ordered to do so by the Internal Revenue Service and/or a final, non-appealable, order of a court of competent jurisdiction; SCERS will correct the overpayments by reconciling employer contributions through the actuarial valuation process.** ~~Recoup any benefit overpayments made on and after the August 31, 2020 payroll consistent with the Error Correction Policy.~~

d. Recognize that SCERS has over-collected member contributions on New Exclusions from January 1, 2013 forward. For the most part, no actual refund payments to this group will be necessary because overpaid benefits will offset refundable contributions and related interest earnings. However, SCERS will refund over-collected member contributions plus interest earnings, consistent with the Error Correction Policy, retroactive to January 1, 2013, to the extent the value of such exceeds the marginal increase in retirement allowances the member received from the New Exclusions.

e. Provide a Notice of Correction to each affected member.

I HEREBY CERTIFY that the above order was passed and adopted on February 15, 2023 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES

(Present but not voting):

Keith DeVore
Board President

Eric Stern
Chief Executive Officer and
Board Secretary