



FELONY FORFEITURE POLICY

PURPOSE

The purpose of this policy is to establish appropriate procedures for the application of California's felony forfeiture laws to SCERS' members.

POLICY

1. The member and the employer have a duty to inform SCERS of a conviction of a work-related felony within 90 days of the conviction. Once SCERS is notified of or learns about a member's felony conviction, SCERS staff will investigate the matter to determine the extent of any retirement benefit forfeiture required by law.
2. SCERS' staff will obtain the criminal court record and any other information that is appropriate to assist the Board in discharging its obligation to make the required determinations. SCERS' Chief Executive Officer is authorized to issue subpoenas for this purpose.
3. The purpose of staff's investigation is to assist the Board in the following:
 - a. Establishing the earliest date of the commission of the subject felony;
 - b. 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
 - c. Calculating the amount of overpaid benefits, employee 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:
 - i. SCERS will determine the amount of service credit earned from the date of first commission of the subject felony to the date of conviction. SCERS will then remove from the member's account any service credit earned between the date of first commission and the date of conviction. SCERS will determine the amount of member contributions attributable to the removed service credit. No interest will be credited on the contributions.

- ii. 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.
 - iii. Member contributions due to the member will be refunded to the member upon the occurrence of a distribution event through a credit to the member's employer in order to avoid violation of Internal Revenue Service early distribution rules. Such refunds to the employer will be made to the employer through an electronic funds transfer.
- e. If the member is retired:
- i. SCERS will review the member's account to determine the member's service credit and Final Average Salary as if the member deferred as of the date of the first commission of the subject felony.
 - ii. SCERS 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, SCERS will rescind the retirement and place the member into deferred status until the member has sufficient eligible service to qualify for retirement.
 - iii. If the member did have sufficient eligible service to retire as of the date of first commission of the subject felony, SCERS will recalculate the member's retirement allowance based on the deferral date by making appropriate changes to service credit and Final Average Salary.
 - iv. If the recalculated retirement allowance results in an overpayment of retirement benefits by SCERS, SCERS will seek to recoup the overpayment from the member pursuant to this process.
 - v. SCERS 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 SCERS, SCERS 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.
 - vi. For purposes of this process, "overpayment" includes compounded interest on the principal amount of any such overpayment at SCERS' actuarial assumed rate of interest effective during the forfeiture period.

4. If staff determines that there is no basis for forfeiture, staff shall recommend

against forfeiture in a memorandum to the Board and explain the basis for the recommendation.

- a. Staff shall notify the member in writing that the staff recommendation will be presented to the Board for determination at a public meeting not less than 45 days following the date of the notice.
 - b. The Board may vote to accept the staff's recommendation against forfeiture as part of the consent calendar.
 - c. If, after considering the staff's recommendation, the Board believes that there is potentially a basis for forfeiture and votes against the recommendation, the Board shall table the matter and consider the forfeiture issue again at a future meeting. That future meeting shall be subject to the notice and hearing procedures described in Paragraph 6 and shall afford the member an opportunity to address the Board.
5. In consultation with the Chief Executive Officer and/or General Counsel, staff may retain outside counsel to assist with the investigation and subsequent recommendation to the Board. The member may also be represented by counsel of his or her own choosing at any stage of the proceedings.
6. If staff determines that forfeiture is warranted, staff shall recommend forfeiture in a memorandum to the Board and explain the basis for the recommendation.
- a. Staff shall notify the member in writing that the staff recommendation will be presented to the Board for determination at a public meeting not less than forty-five (45) days following the date of the notice. The notice to the member shall include staff's determination of the following: the first date of commission of the felony, whether the felony conviction was work-related, the calculation of overpayments, the amount of contributions to be refunded, the monthly adjustment going forward to retirement benefits, if any, and the amount of overpaid benefits, if any, due from the member.
 - b. Both the member and SCERS' staff shall have the opportunity to submit to the Board written evidence, to include written sworn testimony, and oral arguments 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 SCERS staff may present written evidence and oral arguments.
 - c. At the conclusion of the presentations, the Board will take one of the following actions:
 - i. If the Board finds that it would benefit from a formal evidentiary hearing with, and a recommendation from, a referee or hearing officer, the Board may refer the matter accordingly.
 - ii. If the Board finds that further proceedings are unnecessary, it may vote

on staff's recommendation regarding forfeiture.

7. SCERS shall notify the member in writing within ten (10) days of any Board determination regarding forfeiture under Paragraphs 5 and 6. This writing shall constitute the date of final administrative decision for purposes of judicial review by writ of mandate under the California Code of Civil Procedure.

The member may waive the right to a Board hearing under Paragraphs 5 and 6 and accept the staff recommendation. SCERS shall confirm the waiver and acceptance of the staff recommendation in writing, which will constitute the date of final administrative decision for purposes of judicial review by writ of mandate under the California Code of Civil Procedure.

While the member has the right to seek judicial review of SCERS' final administrative decision, no filing or other action will prevent SCERS from implementing its determination unless or until a court orders otherwise.

8. At least three (3) business days prior to payment of any refund of member contributions, SCERS will notify the appropriate court and district attorney's office or other prosecuting authority of any contribution refund payments SCERS will be making to the member, either directly or through the member's employer.
9. If this Policy conflicts with any statutory or case law, the statutory or case law shall govern.

AUTHORITY

California Government Code Sections 7522.70-7522.74
California Code of Civil Procedure Sections 1084-1097

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
09/20/2023	Board amended policy
12/09/2020	Board amended policy
05/15/2019	Board approved policy