

May 20, 2024

Board of Retirement
Ventura County Employees' Retirement Association
1190 S. Victoria Avenue, Suite 200
Ventura, CA 93003

**SUBJECT: Adopt an Interest Rate to Be Applied to Underpaid Benefits Resulting from
Alameda-Related Corrections**

Dear Board Members:

Staff is requesting the Board of Retirement adopt a rate of interest to be applied to underpaid benefits resulting from Alameda-related corrections.

Background

As a result of the July 30, 2020, California Supreme Decision, *Alameda County Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al* (2020) 9 Cal.5th 1032 ("Alameda"), staff began excluding certain pay items from the Final Average Compensation (FAC) when calculating the monthly benefit for new retirees. These exclusions that occurred early in the process after July 2020 were best estimates at that time. The exclusions included 1) the removal of all flex credits for VRSD members which was later determined to be improper because VRSD had reported only the cashable amount of flex credits, 2) the removal of situational pay codes in full where it was later determined that only a portion of the pay code should be removed, and 3) excluding pay items in the originally identified highest FAC period and then later identifying a new higher FAC period due to the exclusions. Since then, more precise numbers have been calculated by the employers and by VCERA, and the recalculations have resulted in underpaid benefits owed to the affected retired members.

Treatment

These underpaid benefits are the result of a calculations that utilized limited information available at the time of the members' retirement, and are not a refund of overpaid member contributions, thus they are not considered to be a "corrective distribution" under IRS rules. Rather, these corrections are missed benefit payments and should be treated as back-pay. Therefore, they are not eligible for rollover to a qualified plan because they are considered to be part of a series of substantial periodic payments and not an independent payment.

Staff recommends that interest be applied to these back-payments at a fair and equitable rate and that the rate be set at 7.9%, calculated using the same methodology as used for semi-annual interest crediting, and compounded. This approach would be consistent with prior Board action on Alameda corrections. On March 27, 2023, the Board adopted a 7.9% interest rate to be applied to corrections and refunds resulting from *Alameda*. At that time, only corrective distributions for refunds of overpaid member contributions were discussed. Now that staff has identified additional refunds related to

Alameda corrections, staff is recommending an extension of the application of the 7.9% interest rate to *all* such Alameda-related corrections, which includes the underpaid benefits mentioned above.

The 7.9% interest rate, when selected on March 27, 2023, was the “Since Inception” Rate, or the average long-term earnings rate based on data compiled by VCERA's previous investment consultant Aon Hewett Ennis Knupp, beginning in 1994, as updated by NEPC beginning in 2013. The rate of 7.9%, was also reflected in the quarterly performance report, as of December 31, 2022.

**RECOMMENDATION: Adopt Interest Rate of 7.9% to Be Applied to Underpaid Benefits
Resulting from Alameda Related Corrections**

Staff would be happy to answer any questions regarding the item at the May 20, 2024 meeting.

Sincerely,

A handwritten signature in cursive script that reads "Amy Herron".

Amy Herron, CPA, CPFO, PMP
Retirement Administrator