DECLINING EMPLOYER PAYROLL POLICY

PURPOSE

A participating employer of SCERS may experience an actual or anticipated material decline in the payroll attributable to its SCERS active members (SCERS-covered payroll). The Declining Employer Payroll Policy is intended to establish guidelines by which SCERS ensures that such employer will continue to satisfy its obligation to timely pay all unfunded actuarial accrued liability (UAAL) attributable to the prior and future service of active, retired, and deferred SCERS members who are or were the participating employer's employees, and their beneficiaries.

POLICY

A participating employer remains liable, and must make the required appropriations and transfers to SCERS for the participating employer's share of liabilities attributable to its members who are and may be entitled to receive retirement, disability, and related benefits from SCERS. It is the Board of Retirement's intent to allow an employer covered by this Policy to satisfy its funding obligation in a manner which provides the employer reasonable flexibility; however, primary consideration will be given to ensuring the adequacy of the assets attributable to the employer to satisfy the employer's funding obligations.

APPLICATION

Absent exigent circumstances or unless otherwise expressly approved by the Board of Retirement (the Board) at a duly-noticed public meeting, the procedures and guidelines for implementing this Policy are set forth below.

Commencement of Coverage – Triggering Events

This Policy covers only those employers for whom the Board determines, based on a recommendation from SCERS' Chief Executive Officer (CEO), that a triggering event as described in this section has occurred and who are not excluded from coverage under this Policy as described in the "Exclusions from Coverage; Terminations of Coverage" section below. The fact that a triggering event may have occurred in the past does not prevent SCERS from applying this policy to that employer. The Board hereby directs the CEO to work with SCERS' staff and SCERS' actuary to obtain the information (e.g., SCERS-covered payroll history) needed for the Board to make determinations regarding triggering events.

Triggering event resulting from ceasing to enroll new hires: Some SCERS participating employers cease to enroll new hires with SCERS but, for a period of time, continue to have at least some previously-enrolled employees maintaining their status as active SCERS members. These employers' SCERS-covered payroll will eventually diminish to zero as their active employees retire or otherwise terminate employment. Examples of employers in this category may include an employer that is acquired by another entity that is not a SCERS participating employer, or a SCERS employer that covers some of its employees through another pension system such as CalPERS or a 401(k) plan. There may be other examples as well.

Triggering event resulting from a material and permanent reduction in SCERS-covered payroll: Some employers may experience a material reduction in their SCERS-covered payroll, but nevertheless continue to enroll their new hires with SCERS. The reduction may be sudden (e.g., due to a discrete event such as a partial loss of funding, or partial outsourcing), or it may be more gradual, over a period of years, and might not be tied to a discrete event. Generally, the Board would determine that this type of triggering event has occurred only if the Board expects that the reduction in an employer's SCERS-covered payroll is expected to be permanent or for an indefinite period of time with no reasonably foreseeable end. Generally, by its nature, the determination whether this type of triggering event has occurred is more subjective than that described in the paragraph immediately above.

Exclusions from Coverage; Terminations of Coverage

This Policy also covers only those employers which are a) financially-viable entities when a triggering event occurs, and b) which SCERS expects to continue indefinitely thereafter to be financially-viable entities. This Policy does not cover any other situation, including, without limitation, an employer going out of business by reason of dissolution, loss of funding, consolidation or merger (unless there is a surviving financially-viable entity that is acceptable to the Board that will make the ongoing payments under the Policy). This Policy also does not cover a "terminating employer" that ceases to provide SCERS membership for all of the employer's active SCERS members (i.e., as of a date certain, withdraws both new hires and existing actives from membership with SCERS).

The Board of Retirement also recognizes that participating employers covered by this Policy will have UAAL funding obligations for several years. Therefore, if concerns arise during that period of time regarding the employer's ongoing existence as a financially-viable entity, the Board may remove the employer from coverage under this Policy and/or take any other measures that may be available to ensure the actuarial soundness of the Plan including, without limitation, assessing the entire amount of the employer's projected UAAL (as recommended by the fund's actuary and approved by the Board) using a risk-free interest rate assumption and payable in a single sum immediately due.

Procedures

1. The CEO will (i) work with SCERS' staff and actuary, and SCERS' participating employers to obtain the information (e.g., SCERS-covered payroll history, financial reports) needed for the Board to make determinations regarding triggering events

and exclusions from, or terminations of, coverage and (ii) report to the Board, as necessary, regarding these activities.

2. Upon a recommendation from the CEO and notice to the affected participating employer, the Board will make a determination at a duly-noticed public meeting regarding (i) whether a triggering event has occurred for the employer, (ii) whether the employer should be excluded from coverage under this Policy, and (iii) for those employers that the Board has previously determined to be covered under the Policy, whether their coverage should be terminated under the "Exclusions from Coverage; Terminations of Coverage" section above. Employers may be required to provide SCERS with updated employee census and payroll data and financial reports. (See Government Code 31543.)

3. If the Board determines that a triggering event has occurred and the employer is not excluded from coverage under the Policy, then, solely for purposes of determining the covered employer's UAAL contribution obligation, SCERS will segregate all assets and liabilities attributable to the employer based upon the recommendation of SCERS' actuary, and shall maintain such separate accounting for the employer until all of the participating employer's obligations to SCERS have been fully satisfied.

4. SCERS' actuary will determine, and certify to the Board of Retirement, the covered employer's funding obligation for its initial UAAL, which obligation shall not be pro-rata based on payroll, but rather based on the employer's actuarial accrued liability (AAL) including inactive members, when determinable. Otherwise, the Board may use other methodologies to determine the liability as recommended by SCERS' actuary, including but not limited to the pro-rata share based on payroll. The Board may determine to require the employer's contributions to be paid in level, fixed-dollar amounts over a period not to exceed twenty (20) years, beginning on July 1 of the plan year immediately after the plan year in which the triggering event occurs. The Board of Retirement has the sole authority to modify the installment period if:

    - The employer demonstrates to the Board of Retirement's satisfaction that the payment schedule causes undue hardship; or

    - The Board of Retirement determines, at any time before the end of the installment period, that the installment period is insufficient to ensure adequate funding of the employer's obligation.

5. The actuary will use the actuarial valuation performed for SCERS as of the end of the plan year immediately prior to the plan year in which the triggering event occurs (and based on all of SCERS' then current actuarial assumptions and methodologies) to determine the initial valuation value of assets (VVA), a smoothed value, allocated to the covered employer. That initial VVA will be a pro-rata allocation based on the employer's AAL (i.e., based on the employer's initial UAAL allocation as described in 4. above). Later values of the VVA (i.e., those used in the future valuations described below) shall be determined by rolling forward the initial VVA, adding contributions, deducting benefit payments, and crediting earnings at the actual smoothed (VVA) earnings rate on total SCERS assets.

6. Annually, after the determination of the covered employer's initial funding obligation, as part of the regular annual actuarial valuation of the plan, SCERS' actuary will measure any change in the UAAL of the participating employer due to actuarial experience or changes in actuarial assumptions. In addition to the amortized payments for the covered employer's initial UAAL determined as of the initial valuation, the employer will be liable for, and must contribute to SCERS, any such new UAAL determined as of subsequent valuations, based upon an amortization schedule recommended by the actuary and adopted by the Board of Retirement. If a negative UAAL (Surplus) exists, SCERS will hold the Surplus to be applied against any future UAAL of the covered employer.

7. If any Surplus remains after the covered employer has satisfied all of its UAAL obligations (Final Surplus), SCERS will distribute the Final Surplus in accordance with the terms of applicable law.

Notwithstanding anything to the contrary herein, the SCERS Board of Retirement hereby reserves the right to pursue any other remedies under applicable law that, depending on the circumstances, may be available to "ensure the actuarial soundness of the retirement system" (See Government Code 31564.2(d)).

BACKGROUND

Pursuant to Gov. Code 7522.52, 31453.5, 31581, 31582, 31584, 31585, 31586, 31611, and other applicable provisions of law, a participating employer remains liable, and must make the required appropriations and transfers to SCERS for the participating employer's share of liabilities attributable to its officers and employees who are and may be entitled to receive retirement, disability, and related benefits from SCERS.

SCERS retains significant authority to enforce payment of contributions from employers that have deferred or retired employees currently receiving benefits from the County retirement system, even if the employer no longer has active employees in the retirement system (*Mijares v. Orange County Employees Retirement System*, 32 Cal.App. 5th 316).

The *Mijares* court also found that the unfunded liability payment is not required to be deducted from active employee payroll and recognized the system's right to recommend changes in county and district contributions as necessary.

RESPONSIBILITIES

Executive Owner: Chief Executive Officer

POLICY HISTORY

Date	Description
06-19-2019	Board approved policy