# *Retired Employees of Kern County*

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Chairman Dustin Dodgin  March 14, 2017
Ms. Gloria Dominguez
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield, California 93311

***Re***: *Distribution of unallocated Supplemental Retirement Benefit Reserve (SRBR) funds.*

Mr. Chairman, Members of the KCERA Board of Retirement;

The Retired Employees of Kern County (REOKC) is requesting that an item be placed on the Board agenda of the Kern County Employees Retirement Association (KCERA) as soon as possible to discuss and/or approve additional distribution of the unallocated SRBR funds.

***Background:***

On March 27, 2014, your participants, through the Coordinated County Employee Organizations of Kern (CCEOK), requested that the KCERA Board do its fiduciary duty, as delineated in California Constitution Article XVI Section 17(b), as well as by your own Actuarial Report of June 30, 2016 on SRBR Funding (pg.4), and take action to increase or create additional SRBR allocations.

This request was placed on the KCERA Board agenda of May 7, 2014 (item #15). At that meeting the request was "Received and Filed; referred to Finance Committee for recommendation within 60 days."

At its meeting on June 26, 2014, the Finance Committee (item #2), "Directed staff to commission an actuarial study" to determine the costs for various options as requested by your participants.

The Finance Committee met again on September 11, 2014 to discuss SRBR (item #1) with the Actuary. The results were: "Received and Filed; referred to staff to review and suggest revisions to the 20/20 policy based on historical information; provide analysis of death benefit at each 5% step; ***propose options for fixed dollar benefits***; update SRBR benefit improvement study accordingly."

Again, on November 25, 2014, the Finance Committee met to further discuss the SRBR (item #2) with the Actuary. The Actuary report "Policy and Death Benefit Improvement Study" was discussed. The results were: "No action on SRBR policy prepared by actuary; recommended increase in SRBR Death Benefit to $5,000 to the Board of Retirement. ***Referral to staff to revise the SRBR policy based on comments and discussion of the Finance Committee; Develop fixed dollar amount options for consideration, and distribute survey to all retirees for comment; Staff to report back to Finance Committee."***

The Board of Retirement (BOR) on December 10, 2014 (item #29) "Approved increase in SRBR Death Benefit from $3,000 to $5,000 as recommended by Finance Committee." The motion was amended to include an effective date of January 1, 2015.

The BOR on May 6, 2015, again reaffirmed its action of December 10, 2014: "Approved retroactive increase in SRBR Death Benefit from $3,000 to $5,000, effective January 1, 2015."

All of the above votes on a study of costs for increasing SRBR benefits and the actual increase in the Death Benefit were unanimous votes with the exception of the 12/10/2014 and the 5/6/2015 votes of the BOR. In each case there was one NO vote cast by the Board of Supervisors representative, Mr. Couch.

***The SRBR study on providing additional benefits which was referred to the Actuary and Staff on November 25, 2014 by the Finance Committee has been pending 27 months with little or no action; action needs to be taken in the next 30 days.***

***COMMENTS:***

The Board of Retirement is basically administrative in nature, California Constitution Article XVI Section 17(a) in part states: " ***The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries."*** Also Article XVI Section 17(b) states in part: ***"A retirement system board's duty to its participants and their beneficiaries shall take precedence over any other duty."*** Article XVI Section 17 in its entirety establishes the retirement fund as a trust fund which shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system. As a trust fund, the California Probate Code also governs the retirement fund. The California Probate Code also establishes the primary fiduciary duty of the BOR to the participants and beneficiaries of the retirement fund.

The BOR has sole authority over the distribution of the SRBR, and your fiduciary duty as outlined in Article XVI Section 17 is to deliver benefits to your participants and beneficiaries. Your own 20/20 SRBR past procedures, as stated on Page 4 of the Supplemental Retirees Benefit Reserve (SRBR) Report as of June 30, 2016 by Segal Consulting, (KCERA actuary) states: "Under the Board's direction, if the Present Value of the Targeted Funding with Reserves is more than 100% funded, the Board may consider increasing the SRBR approved benefits." As of June 30, 2016, the funded status was over the 100% benchmark at 181.3%.

The County Employees Retirement Law of 1937 (CERL) section 31618 states in part: "***The Supplemental Retiree Benefit Reserve shall be used only for the benefit of retired members and beneficiaries."*** As a result of the BOR non-action, the SRBR unallocated ratio increased to 181.3% in 2016, leading the County to seek legislative action to cap the funding of the SRBR at 120% of approved benefits. This non-action by the BOR on the SRBR allocation has the possible effect of aiding a third party to the detriment of the trust participants.

As the BOR has sole authority over the distribution of the SRBR, and the SRBR can only be used for the retired members and beneficiaries, and the BOR has a fiduciary duty to administer the trust for the benefits of its participants, the BOR's own past procedures would lead the BOR to seek a study as requested by your Finance Committee.

## ***CONCLUSION***

REOKC is well aware of the political currents at play in any approval of additional SRBR benefits. The County, as the prime employer, benefits from having the unallocated SRBR funds as high as possible so they can point to that high funding ratio in their attempts to change the SRBR statute, in a way, that would effectively lower their contribution amount. Should the KCERA Board approve any additional SRBR benefits, the County would lose its only talking point that supports their argument for the changes in statute that the County would like to see enacted. It is with great anticipation that the 5,000 members of REOKC are waiting to see how the KCERA Board members appointed by the County Board of Supervisors will vote, knowing that their vote can either provide needed benefits for the KCERA participants, or potentially benefit the position of the County to the possible detriment of KCERA participants.

KCERA has received numerous legal opinions starting in 2000, with the opinion of Morrison & Foerster, through 2016 when their current Fiduciary counsel, Ashley Dunning with Nossaman

LLP, advised the KCERA Board on its fiduciary duty to its participants in a training session on March 29, 2016. Consistently over the past 15 years, fiduciary counsel has advised the BOR that its primary fiduciary responsibility is to its participants and beneficiaries, as outlined in Article XVI Section 17 of the California Constitution and in accordance with California Probate Code Section 16081(a) which states in part that the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purpose of the trust. As stated in Article XVI Section 17(a) in part, the assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses on f administering the system.

REOKC is not unaware of the concerns of the BOR and its actuary on the ability of the SRBR fund to continue benefits granted by the BOR. Because of the possible liability that could exist under the SRBR Tier III current formula, REOKC would consider supporting some form of change like a cap that would limit the SRBR Tier III to participants under a fixed dollar amount (somewhere between $50,000 and $75,000) incremented by the CPI each year. REOKC would also consider a cap on the amount of SRBR Tier III payment in any one year to the same amount as the maximum COLA increase. In this manner, the payment would be limited to lower income participants and beneficiaries with a maximum of 2.5% in any year. This method would mean that a participant would take longer to get to the 80% purchasing power but it would spread the payments evenly over a number of years rather than a very large amount in any one year. By capping the SRBR Tier III it would exclude the higher paid retirees and the Internal Revenue Code (IRC) Section 415 retirees and should help in years of high inflation, while extending the life of the SRBR fund.

In addition to the changes to SRBR Tier III, REOKC would suggest a new benefit, SRBR Tier IV in the amount of $15 for all participants with an employee hire date of June 30, 2017 or earlier. By limiting the participants eligible for SRBR Tier IV, it would be a fixed liability for the actuary to calculate.

REOKC is prepared to work with KCERA Administration and your Actuary on the SRBR allocation and any new suggestions brought forward by the KCERA Board.

Sincerely,

John J. De Mario
President, Retired Employees of Kern County

cc. All KCERA Board Members
JJD/mlb