RECOVERY OF OVERPAYMENT OF MEMBER BENEFITS & UNDERPAYMENT OF MEMBER CONTRIBUTIONS POLICY

I. PURPOSE

The purpose of this Policy is to establish standards and procedures for recovery or resolution of overpayments of member benefits and underpayment of member contributions.

II. OBJECTIVES

The objectives of this policy are as follows:

A. To meet the Board’s fiduciary obligation to conserve fund assets and protect the integrity of the fund for the benefit of the members and beneficiaries.

B. To restore the Plan to the position it would have been in had no overpayment or underpayment occurred by recovering, when reasonable and feasible, from a member, or others, any overpayment of benefits or underpayment of contributions.

C. To maintain the tax-qualified status of the pension plan and avoid making any gift of public funds.

III. ASSUMPTIONS

A. The procedures and outcomes are intended to comply with applicable requirements of the Internal Revenue Code and IRS regulations, including the IRS Employee Plans Compliance Resolution System (EPCRS).

B. For purposes of this policy, the term “error” shall refer to any situation in which:

1. A member or other beneficiary receives, for any reason, a benefit or other payment in excess of the amount otherwise due under the Plan or receives such payment at an inappropriate time; or

2. A member fails, for any reason, to make the full amount of employee contribution that such member is required to otherwise make under the Plan.

Error amounts shall be the amount of overpayment of benefits or underpayment of contributions prior to the calculation of applicable interest.

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IV. GUIDELINES & PROCEDURES

A. Report and Investigation.

1. When an error is identified, staff shall promptly notify the CEO, who shall ensure that an appropriate and timely investigation is undertaken into the facts and circumstances surrounding the error and that all necessary corrective actions are taken. The CEO shall make periodic reports to the Board on errors and corrections results at least annually or more often, as may be directed by the Board.

2. As part of the investigation into overpayments, Staff shall be vigilant for any indications of fraud as a cause for the overpayment, whether by the payee or a third party. In the event that fraud is suspected, Staff shall immediately notify the Legal Department and the CEO. An attorney shall be assigned to the matter and shall work with Staff to formulate a detailed investigation to determine whether, in fact, evidence of fraud exists. Further investigation may include retention of a private investigator or other outside resources as may be deemed appropriate under the circumstances. Based on the evidence uncovered, Staff and the Legal Department shall consider notification of law enforcement and the pursuant of criminal action. In addition, Staff and the Legal Department shall undertake civil action to recover fraudulently obtained ACERA funds if justified.

B. Correction of Error/Recovery of Funds.

1. As soon as possible after an error is discovered, ACERA staff shall determine the amount of the error and calculate the correct benefit or contribution amount, as well as any amounts owing due to overpayment of a benefit or undercollection of contributions.

2. a. ACERA staff shall then promptly notify the member or beneficiary in writing of any revised benefit or contribution amount together with any amount owing due to overpayment of a benefit or undercollections of contributions. The notice shall identify the circumstances of the error, the means used to calculate the corrected amounts, and the fact
that corrective adjustments will be made to all future contributions or
benefit payments.

b. In its written notice to the member or beneficiary, ACERA staff shall
also propose repayment options to recover the error amount which
may include:
1) A lump sum payment;
2) Periodic installment payments; or
3) Offsetting the amount to be recovered against future benefits.

In structuring a repayment methodology, ACERA staff shall take into
consideration the financial circumstances of the member or beneficiary
affecting the member or beneficiary’s ability to make payments and
any other factors affecting the time period or amount of repayment
including any applicable statute of limitations on the collectable
amount.

c. Interest on the past amounts owed shall accrue interest as follows:
1) Interest at ACERA’s earned interest rate from the time of the
error until discovery of the error; and
2) Interest at ACERA’s assumed rate of return from the time of
discovery such amounts are fully repaid. Interest on repayment
shall not be required if the repayment is completed within the
same fiscal year when the error occurred.

3. The notice shall also inform the member or beneficiary of the opportunity to
appeal the foregoing determination in accordance with Section D, below,
provided that such an appeal shall not be a condition precedent to making the
necessary adjustments on a going-forward basis.

4. In the event of the death of the member or beneficiary before full repayment
has been made, ACERA shall use all reasonable efforts to pursue a claim or
claims against the member or beneficiary’s estate, survivors, heirs, and/or
beneficiaries to recover the unpaid amount.
5. If no agreement can be reached with the member or beneficiary for repayment, or if the member or beneficiary fails to respond to communications from ACERA staff, ACERA staff may initiate involuntary recovery of the unpaid amount, including from future benefit payments subject to approval by the Board.

C. Compromise & Settlement.

1. In limited circumstances, ACERA may agree to an extraordinary repayment process, including discounted interest, and/or accept less than full recovery, including interest from a member or beneficiary in repayment of an amount owing due to an overpayment of benefits or underpayment of contributions. Factors to be considered in compromising any recovery shall include, but not limited to: the likelihood of collection and the cost of collection, taking into consideration the amount of possible recovery in comparison to level of hardship to the member or beneficiary or to his/her estate or heirs.

2. If applicable under the EPCRS, the Board shall consider seeking recovery from the plan sponsor in conjunction with any decision to compromise or settle a claim. In such a case, written notice thereof shall be given to the plan sponsor, who shall have the right to submit the matter to the Board for consideration.

3. The CEO shall have authority, with the advice of Chief Counsel, to compromise recovery of error amounts under this Policy when the total amount, excluding accrued interest, is $10,000.00 or less. The CEO shall apply the standards for compromise set forth in this Section. The CEO is also authorized to waive recovery of de minimis claims of $50.00 or less taking into consideration of the cost effectiveness and reasonable success of recovery. All other compromises shall be approved by the Board.

4. ACERA shall maintain a permanent record of all error corrections and the payment to ACERA of those obligations, including a record of all collections efforts. The record shall include any compromises or settlements.
D. **Appeals/Due Process.**

The following procedures shall apply to any appeal filed by a member or beneficiary arising from an error correction determination by ACERA.

1. If a member or beneficiary objects to any of the matters set out in Section IV.B, above, a written appeal must be filed with ACERA within 60 days of the date of mailing of the above notice set out in IV.B.2, above. Failure to do so shall constitute a waiver of the right to a hearing. If the member or beneficiary files a timely appeal, ACERA staff shall place the matter on the agenda for a future Board of Retirement meeting. Written notice of the meeting shall be provided to the member or beneficiary. The member or beneficiary shall be entitled to submit written evidence or argument to the Board. Any staff materials submitted for the hearing shall be provided in advance to the member or beneficiary. The member or beneficiary may have a representative appear on their behalf.

2. Hearings shall be held before the Board of Retirement, which after hearing all evidence and argument, shall adopt written findings and a statement of decision. The member or beneficiary shall be provided a copy of the findings. The Board shall have the discretion to hear the matter directly or refer it to a hearing officer for a recommendation, in which case, the hearing officer’s recommendation shall be made to the full Board for final decision.

V. **POLICY REVIEW**

The Operations Committee shall review this policy at least every two (2) years to ensure that it remains relevant and appropriate.

VI. **POLICY HISTORY**

A. The Board adopted this policy on September 17, 2015.

B. The Board reviewed and affirmed this policy, with revisions on May 19, 2016.
Historical Board Review

The Board adopted the *Recovery of Overpayment of Member Benefits & Underpayment of Member Contributions Policy* on September 17, 2015.

- May 19, 2016, reviewed and affirmed with revisions.