Error Correction Policy

I. Purpose

This Policy establishes standards and procedures for resolution of overpayments or underpayments of benefits or member contributions.

II. Objectives

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 make reasonable efforts to restore the Plan to the position it would have been in had no error occurred.

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

III. Assumptions

A. These procedures are intended to comply with applicable requirements of the Internal Revenue Code (IRC) and applicable Internal Revenue Service (IRS) revenue procedures and Treasury regulations. If there is a conflict between applicable law and this policy, the law shall govern.

B. This policy applies when an error affects an individual member's or beneficiary's benefits or contributions. In the event of a system-wide error that affects multiple members'/beneficiaries' benefits or contributions, the Board may implement a system-wide correction process that it determines appropriate under the circumstances.

IV. Guidelines & Procedures

A. Investigation and Reporting.

1. Investigation: When an error is identified, Staff shall promptly notify the CEO (or designee), 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.

2. Reporting: The CEO shall make periodic reports to the Board on errors and corrections results at least annually.

3. Overpayment based upon fraud:

   a. Staff shall be vigilant for any indications of fraud as a cause for overpayment, whether by the payee or a third party.

   b. If fraud is suspected, Staff shall immediately notify the Legal Department and the CEO who will investigate whether evidence of fraud exists.

   c. Further investigation may include retention of a private investigator or other outside resources as may be deemed appropriate under the circumstances.

   d. Based on the evidence uncovered, Staff and the Legal Department may notify law enforcement and pursue criminal action.

   e. If justified and reasonable, Staff and the Legal Department may undertake civil action to recover fraudulently obtained ACERA funds.

B. Overpaid Benefits and Underpaid Contributions: Correction and Recovery

1. As soon as possible after an error is discovered, ACERA staff shall determine:

   a. The appropriate date of correction;

   b. The correct benefit or contribution starting from the date of correction;

   c. The amount of the error starting from the beginning of the erroneous payment to the date of correction;

   d. The "appropriate interest" related to the error as defined below.

   e. Whether Gov't Code § 31541.2 applies to any benefit overpayments and, if so, the impact such application has on the member/beneficiary and employer.

2. ACERA shall promptly notify the member/beneficiary in writing of the following:

   a. The amount and starting date of any prospective adjustment to benefits or contributions. The starting date must be no less than 30 days after ACERA sends the notice to the member/beneficiary, unless ACERA's Chief Counsel determines that there is good cause to make the correction sooner.

   b. The circumstances of the error and the means used to calculate the corrected amount.

   c. The amount of any overpaid benefits or underpaid contributions plus the amount of appropriate interest. If Gov't Code § 31541.2 applies, ACERA shall explain how such application impacts the member/beneficiary and employer.

d. Repayment options, which may include a lump sum payment, installment payments or an offset against future benefits; and

e. The right of the member/beneficiary to appeal the staff determination. Staff will make the necessary adjustments on a prospective basis regardless of whether an appeal is filed. If the staff determination is overturned, any amounts withheld during the appeal process will be paid to the member/beneficiary.

3. Appropriate Interest

a. If the evidence shows that the benefit overpayment or contribution underpayment resulted from fraud or dishonest conduct by the member/beneficiary or because the member/beneficiary provided, or caused to be provided, inaccurate information to ACERA or the member's employer, or if the Chief Counsel determines that full correction is required under applicable law (e.g., the IRC, Treasury regulations, or the IRS' Employee Plans Compliance Resolution System), then "appropriate interest" will be as follows:

1) ACERA's smoothed, semi-annual interest returns on its investments from the time of the error until the last period of smoothed semi-annual interest returns before discovery of the error (investment losses will not result in any reduction to the principal amount the member owes ACERA).

2) ACERA's assumed annual effective rate of return, compounded based on the payment frequency (e.g., monthly interest of 0.56541% when the assumed rate of return is 7% annually), from the last period of smoothed semi-annual interest returns (per No. 1 immediately above) until such amounts are fully repaid.

b. If the benefit overpayment or contribution underpayment was solely the result of an error by ACERA or the member's employer[1] and the member/beneficiary is not relieved of a repayment obligation under Gov't Code § 31541.2, then "appropriate interest" will be as follows:

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[1] When determining fault, the CEO may consider the member/beneficiary's (a) failure to alert ACERA to an overpayment that the member/beneficiary knew or should have known was made in error, and (b) failure to cooperate with ACERA to correct the error, even if the member/beneficiary was not initially at fault for the overpayment.

1) <u>Before Notice</u>: No interest shall be charged from the time of the error until ACERA notifies the member/beneficiary of the error. Any liability created by this action shall be part of ACERA's unfunded liability.

2) <u>After Notice</u>:

i. If the CEO determines that the member (a) did not know, and should not reasonably have known, that amounts were paid in error before receiving notice from ACERA, and (b) did not take action to impair ACERA's recovery of the overpayment, then no interest shall be charged during a repayment plan.

ii. If the CEO determines that the member (a) knew or reasonably should have known that amounts were paid in error, or (b) took action to impair ACERA's recovery of the overpayment, interest will accrue at ACERA's assumed annual effective rate of return, compounded based on the payment frequency (e.g., monthly interest of 0.56541% when the assumed rate of return is 7% annually) under a repayment plan, from the time the member is notified of the error until such amounts are fully repaid.

4. In structuring a repayment methodology, ACERA staff shall take into consideration the financial circumstances of the member/beneficiary affecting their ability to make payments. The repayment schedule will not exceed 10 years except in cases of extreme hardship as defined below.

5. If the member/beneficiary dies before full repayment has been made, ACERA shall use all reasonable efforts to recover the unpaid amount from the member/beneficiary's estate or trust, survivors, heirs and/or beneficiaries.

6. If no agreement can be reached with the member/beneficiary for repayment, or if the member/beneficiary fails to respond to communications from ACERA staff, ACERA may take action to recover the unpaid amount, including through reductions to future benefit payments, subject to Board review if the member appeals to the Board.

7. Overpaid benefits that are not recovered from the member per Gov't Code § 31541.2 will be paid through recognition in the actuarial accrued liability if doing so

will impact only the employer of the overpaid member. Otherwise, the employer must pay ACERA the overpaid amounts, plus interest at ACERA's assumed annual effective rate of return, compounded monthly (e.g., monthly interest of 0.56541% when the assumed rate of return is 7% annually) from the time of each overpayment until such amounts are fully repaid.

8. ACERA interprets "time of retirement" and "date of retirement" in Gov't Code § 31541.2 (b)(3)(A), as the date that ACERA issues the first allowance payment based on disallowed compensation. ACERA will not apply Section 31541.2(b)(3)(B) (which requires the employer to pay the member/beneficiary 20% of the projected value of the reduction in benefits) to an error that is corrected before such an allowance payment is made.

9. When applying Gov't Code § 31541.2, ACERA will determine interest on overpaid employer contributions using ACERA's assumed annual effective rate of return, compounded based on the overpayment frequency (e.g., monthly interest of 0.56541% when the assumed rate of return is 7% annually) from the time of each overpayment until such amounts are fully repaid.

C. Compromise & Settlement.

1. In some circumstances, ACERA may agree to receive less than the full amount in repayment. The recovery options may include:

   a. Using a discounted interest rate;

   b. Waiving interest altogether; or

   c. Accepting less than full repayment of the principal.

2. Factors to be considered in compromising any recovery shall include, but not limited to:

   a. The likelihood of collection;

   b. The cost of collection;

   c. The amount of possible recovery;

   d. The relative fault of the member/beneficiary, ACERA and employer; and

   e. Extreme hardship to the member/beneficiary or to his/her estate or heirs.

3. For purposes of this policy, "extreme hardship" will be determined as follows:

a. The member bears the burden of establishing any claimed "extreme hardship."

b. "Extreme hardship" is not a bright line test, and a finding of "extreme hardship" depends on the facts and circumstances presented by the member.

c. ACERA will consider the following factors in determining whether the member has established an "extreme hardship" justifying compromise of the amount owed by the member:

1) Net worth of member and spouse.

2) Amounts and sources of all income to the member and spouse. In general, ACERA will consider that an "extreme hardship" is established if the member's gross income is no more than 400% of the current federal poverty level based on the member's household composition of single, married or family.

3) Monthly expenses.

4) Existence and value of real estate and personal assets.

5) Divorce or legal separation.

6) Current or pending catastrophic financial events.

7) Other factors presented by the member.

4. If the member's gross income is no more than 400% of the federal poverty level as defined above, ACERA will not collect more than 15% of the member's gross income.

5. In consultation with the Chief Counsel the CEO is authorized to compromise recovery of error amounts of $15,000.00 or less, excluding interest. The CEO shall apply the standards for compromise set forth in this Section. The CEO is also authorized to waive recovery of claims of $500.00 or less. All other compromises must be approved by the Board.

6. ACERA shall maintain a record of all error corrections, payments, collection efforts and compromises and releases related to those errors.

D. Underpaid Benefits

1. When ACERA has underpaid benefits to the member/beneficiary, the member/beneficiary shall be entitled to a prospective adjustment to his or her

retirement benefits necessary to correct the error, as well as a lump sum payment for all past amounts owed as a result of the error.

2. If the underpayment was due to an ACERA error, as determined by the CEO in consultation with the Chief Counsel, ACERA will pay interest at ACERA's assumed annual effective rate of return, compounded monthly (e.g., monthly interest of 0.56541% when the assumed rate of return is 7% annually) from the time of underpayment to the time the member/beneficiary is made whole for the underpayment.

3. If the member/beneficiary who was underpaid dies before payment of the lump sum amount due, the payment will be made in accordance with ACERA's process for paying residual amounts following the death of the member.

E. Underpaid Member Contributions:

For underpaid member contributions (which includes completely missed contributions), ACERA will follow the procedures outlined in the Membership Policy for members who are currently employed with a participating employer and will follow the procedure outlined in Sections IV(B) and (C) above for members who are no longer employed by a participating employer.

F. Overpaid Member Contributions

1. For active members, ACERA will calculate the total overpaid member contributions, plus any related interest that was credited to the member's account. That total amount will be applied to the employer's future contributions to ACERA and the employer must pay the total amount to the member.

2. For deferred and retired members, ACERA will return directly to the member all overpaid member contributions plus any related interest that was credited to the member's account.

G. Appeals/Due Process.

The member/beneficiary may appeal any staff decision regarding corrective actions consistent with the Administrative Hearing Policy.

V. Policy Review

The Operations Committee shall review this policy at least every three 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 March 20, 2025[2]

[2] *The Board adopted the Recovery of Overpayment of Member Benefits & Underpayment of Member Contributions Policy on September 17, 2015. The Board reviewed and affirmed, with revisions, May 19, 2016, June 21, 2018, September 17, 2020, April 20, 2023 and January 16, 2025.*