ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Error Correction Policy

I. Purpose

This Policy establishes standards and procedures for recovery or resolution of over or underpayments of member benefits and underpayment of 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 restore the Plan to the position it would have been in had no overpayment or underpayment occurred by recovering from a member, or others, when reasonable and feasible, 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 (IRC) and Internal Revenue Service (IRS) regulations, including the IRS Employee Plans Compliance Resolution System (EPCRS). If there is a conflict between applicable law and this policy, the law shall govern.

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.

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

C. This policy is designed for use when the overpayment affects an individual member's benefits or contributions. In the event of a system-wide error that affects multiple members' benefits, 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, 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. In the event that 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. Correction of Error and Recovery of Funds.

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

   a. The appropriate date of correction; and

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

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

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

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

   a. The amount and starting date of any prospective adjustment to the member's payment or contribution reflecting the corrected amount.

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

   c. The amount of any overpaid benefits or contributions plus the amount of appropriate interest.

   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 or beneficiary to appeal the ACERA staff determination. ACERA will make the necessary adjustments on a going-forward basis regardless of whether an appeal is filed. If the staff determination is overturned, the ACERA Board may direct staff to refund any amounts withheld during the appeal process.

3. Appropriate Interest

   a. Interest on the outstanding amount due is compounded twice annually during the period where the benefit was overpaid and during any repayment period.

   b. If the evidence shows that the benefit overpayment resulted from fraud or dishonest conduct by the member/ payee or because the member/ payee provided, or caused to be provided, inaccurate information to ACERA or the member's employer, then "appropriate interest" will be as follows:

1) The earned interest rate from the time of the error until discovery of the error.

2) The assumed rate of return from the time of discovery until such amounts are fully repaid.

c. If the benefit overpayment was solely the result of an error by ACERA or the member's employer, then "appropriate interest" will be as follows:

1) No interest shall be charged from the time of the error until discovery of the error. Any liability created by this action shall be assumed as unfunded liability.

2) The assumed rate of return from the time of discovery until such amounts are fully repaid.

4. In structuring a repayment methodology, ACERA staff shall take into consideration the financial circumstances of the member or 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. In the event of the death of the member or beneficiary before full repayment has been made, ACERA shall use all reasonable efforts to recover the unpaid amount from the member or beneficiary's estate or trust, survivors, heirs, and/or beneficiaries.

6. 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 actions for recovery of the unpaid amount, including reductions from future benefit payments, subject to approval by the Board.

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, and

d. Extreme hardship to the member or 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 $10,000.00 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 $100.00 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. Underpayments

1. Underpayment of benefits:

a. When ACERA has underpaid benefits to the member, the member 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.

b. If the member 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.

2. Underpayment of contributions:

When a member has underpaid contributions ACERA will follow the procedures outlined in the Membership Policy for members who are currently employed, or in this Policy at section IV.B. and C for members no longer employed by a participating employer.

E. Appeals/Due Process.

The member or beneficiary may appeal any staff decision regarding corrective actions consistent with the Board Administrative Appeals Policy.

V. Policy Review

The Operations Committee shall review this policy at least every three (3) 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 June 21, 2018[1].

[1] *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, and June 21, 2018.*