

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BOARD OF RETIREMENT

**POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT OF MEMBER
CONTRIBUTIONS**

Adopted: 12/10/2014

I. INTRODUCTION

The Board of Retirement ("Board") has a fiduciary obligation to conserve retirement fund assets and protect the integrity of the fund, for the benefit of the members and beneficiaries of the Contra Costa County Employees' Retirement Association ("CCCERA").

The Board determines the required member contributions in accordance with law and in consultation with its actuary. Subject to all applicable laws, it shall be CCCERA's policy to make every reasonable effort to recover from a member the amount of any underpayment of contributions, and to remit to a member the amount of any overpayment of contributions, consistent with this Policy and the procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of member contributions, and within a reasonable period of time after written notification to the affected member, CCCERA will correct any overpayment or underpayment of member contributions.

This Policy is designed for use when errors affect an *individual* member's contributions. In the event of a system-wide error that affects *multiple* members' contributions, the Board may implement a system-wide correction process that it determines is appropriate under all the circumstances.

In the event of any inconsistency between applicable law and this Policy, the law shall take precedence.

Notwithstanding this Policy, if an overpayment results from provisions of federal tax law, any correction procedures specified by the IRS will be followed to the extent feasible.

II. PURPOSE

The purpose of this Policy is to set forth procedures for handling the overpayment and underpayment of retirement contributions.

III. POLICY

A. Overpayments of Contributions By Members

1. When a Member has overpaid contributions, the Member shall be entitled to a prospective adjustment to his or her contributions necessary to correct the overpayment, as well as a lump sum payment for all past overpayments, with appropriate interest. Appropriate interest shall be the rate set forth in the Board's Interest Crediting Policy (currently the actuarially assumed rate of return) for each applicable pay period. The adjustment shall be made in the Member's pay from their CCCERA participating employer as soon as is reasonably practicable following CCCERA's discovery of the overpayment.
2. If a Member who overpaid contributions has died prior to payment of the lump sum amount due, the following procedures will be followed:
 - A. Member With Designated Beneficiary
 - If the Member has named a designated beneficiary, the payment will be made directly to the designated beneficiary. *See* County Employees Retirement Law of 1937 ("CERL"), Government Code Section 31452.7.
 - B. Member Without Designated Beneficiary
 - If there is an open estate (*i.e.*, no order for final distribution yet), payment will be made to the estate (through the personal representative).
 - If final distribution of the estate has already been made, CCCERA staff will review the order for final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.
 - If an estate was not established, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property on file with CCCERA. *See* Prob. Code Section 13101.
 - CCCERA staff shall make reasonable efforts to locate the person(s) entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such person, or by other means of similar intended effect. The letter shall request written confirmation that the person entitled to payment still lives at that address and will accept payment. Upon receipt of such written confirmation, the payment will be mailed to that person at that address. *See* CERL Section 31783.5(b).
 - If, after taking the above steps, CCCERA staff has not been able locate a person entitled to payment, CCCERA shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds

may be transferred into the system's pension reserve fund. If someone later claims the funds, the Board will consider such claims on a case-by-case basis. See CERL Section 31783.5(c).

- CCCERA will maintain a permanent record of all amounts of outstanding refunds of overpayments and any amounts that have been transferred into the pension reserve fund.
 - In cases where there is no designated beneficiary and the total amount of overpayment is less than \$50, CCCERA staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to CCCERA, however, will be considered regardless of size.
3. Overpayments of \$5 or less will only be refunded at the request of the Member.

B. Underpayment of Retirement Contributions By Members

1. Whenever an underpayment of contributions is discovered, CCCERA shall make a prospective adjustment to the member's contributions and take all reasonable steps to recover the full amount of all past underpayments, with "appropriate interest," subject to the provisions of this Policy and applicable law. If the underpayment was due to fraud, dishonest or improper conduct by the member, or by the member providing inaccurate information to CCCERA or the member's employer, appropriate interest shall be CCCERA's actuarially assumed rate of return that was applicable for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid. If the underpayment was the result of an error by CCCERA or the member's employer, appropriate interest shall be 3% per annum for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid.
2. CCCERA will recover underpayments by (a) a lump sum payment from the member, (b) installment payments from the member, (c) additional amounts added to the member's future contributions, over a period of time as determined by the Board, (d) offsets to future benefit payments to the member, over a period of time as determined by the Board or (e) a combination of the foregoing, unless the Board, in its discretion and because of legal or practical considerations, determines that another process is warranted.
3. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of underpayments only where the cumulative total amount underpaid by the member is \$50 or more. Accordingly, the Retirement CEO is authorized to not seek recovery of any underpayments where the total amount underpaid by the member is less than \$50.
4. The Retirement CEO shall have authority, on the advice of legal counsel, to compromise recovery of underpayments when the total amount of underpayment, not including interest, is less than \$5,000. Only the Board may compromise claims in which the total amount of underpayment, not including interest, is \$5,000 or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and

extreme hardship to the member will be considered by the Retirement CEO and/or the Board when determining whether to compromise a claim. Compromising claims may include a different method of repayment than is otherwise provided by this Policy and/or a partial forgiveness of the amounts underpaid.

5. The Board adopts the following procedures for accomplishing the recovery of underpaid contributions:

A. Upon discovery of an underpayment, CCCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the member advising the member of the underpayment and proposing a repayment schedule, as follows:

i. The letter will identify the circumstances of the underpayment and the fact that adjustments will be made to all future contribution amounts.

ii. The letter will request payment to CCCERA of the past amount underpaid, subject to the provisions of this Policy.

iii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.

iv. The agreement to pay the amounts underpaid will provide two options, one of which may be selected by the Member:

(1) Option 1 — equal installments deducted from the Member's pay (in addition to the contributions otherwise required of the member), or benefit payments (if the Member is retired), over the same length of time that the underpayments occurred, with appropriate interest (as that phrase is defined in No. 1 above) applied for the underpayment period and the payment period. If the Member's employment terminates during the payment period, the Member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts CCCERA owes the Member (in retirement benefits or otherwise), if the member does not make a lump sum payment.

(2) Option 2 — lump sum payment to CCCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in No. 1 above) applied during the underpayment period.

(3) Option 3 — installment payments to CCCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in No. 1 above) applied during the underpayment period.

v. The letter and agreement to pay underpaid amounts will provide that Option 1 will go into effect by default if a written response from the member is not received within 30 days following the date the letter was delivered.

B. If the amount of the underpayment, not including interest, is \$5,000 or more, CCCERA staff will attempt to contact, the Member by phone to discuss the contents of the letter before the letter is sent out for delivery.

C. CCCERA may pursue, all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.

D. Upon the death of the Member before full repayment has been made, CCCERA shall pursue a claim or claims against the Member's estate, survivors, heirs and/or beneficiaries to recover the unpaid amounts.

CCCERA will maintain a permanent record of all amounts of underpayments and the payment to CCCERA of those underpayments.