



Board of Retirement Administrative Policy

**Policy and Procedure for Inaccuracies
Relating to Member Contributions,
Withdrawals, and the Payment of Benefits**

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San Mateo County Employees' Retirement Association

BOARD OF RETIREMENT

POLICY AND PROCEDURE FOR THE CORRECTION OF INACCURACIES RELATING TO MEMBER CONTRIBUTIONS, WITHDRAWALS, AND THE PAYMENT OF BENEFITS

I. POLICY OF THE BOARD OF RETIREMENT

Pursuant to the Board of Retirement's ("Board's") fiduciary duty to conserve retirement fund assets and protect the integrity of the fund for the benefit of the members and beneficiaries, it is the policy of the Board:

- To collect member contributions and issue all disbursements in accordance with the law;
- To correct inaccuracies as soon as administratively feasible once identified and verified;
- To recover under-payments of member contributions and over-payments of SamCERA funds where it is both in accordance with the law and reasonable to do so in the opinion of the Board; and
- To remit to a member the amount of any overpayment in contributions or underpayment of benefits consistent with this policy and procedures.

For purposes of this policy, the term Chief Executive Officer ("CEO") means the Chief Executive Officer and the Chief Executive Officer's designee. The term "Member" means member, beneficiary, or survivor.

This Policy is designed for use when calculation and other inaccuracies affect an individual or small number of members. In the event of a system-wide inaccuracy that affects a larger number of members, the Board may direct staff to implement a system-wide correction process that it determines is appropriate under the circumstances.

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

II. PROCEDURE FOR RESOLVING CONTRIBUTION INACCURACIES

A. Under-Payment of Member Contributions Discovered While A Member Is Still Active.

1. The CEO shall confirm the amount of contributions that the member should have paid, the period of time that the under-payment occurred, and the total amount of contributions owed.
2. Staff shall promptly notify the employer to correct the inaccuracy on a going-forward basis so that the correct amount of contributions is deducted from the member's bi-weekly pay. The member shall be notified as well.
3. With regard to the collection of under-payments in arrears, the total amount of the under-payment and the applicable interest on that amount shall be collected. The interest shall be assessed at the rate(s) of interest credited to the members' accounts for the period in which the under-payments were occurring and shall be applied to the outstanding amount due until such time as a repayment arrangement is commenced. Thereafter, the rate of interest during the repayment period shall be the assumed actuarial rate of return applicable at the commencement of the repayment. If the under-payment by the member was due to an incorrect pick-up or cost share, or COLA cost share in which the employer paid rather than the member, no interest shall be assessed.
4. If the full amount of the past due contributions and interest equals \$50 or less, staff shall send a notice setting forth:
 - (a) The total amount of contributions and interest owed; and
 - (b) The amount of the additional contributions to be deducted from the member's next payroll.
5. If the full amount of the past due contributions and interest to be collected will exceed \$50, staff shall undertake a collection effort that shall commence after sending a notice to the member setting forth:
 - (a) The total amount of contributions and interest owed and the rate that interest will continue to accrue should repayment commence;
 - (b) The bi-weekly amount of the additional contributions to be deducted from the member's payroll;

- (c) The commencement date of the collection and the number of affected pay periods;
 - (d) The member's right to object to the collection of the additional contributions and/or collection method and the deadline for such objection; and
 - (e) The fact that repayment will commence if a written objection is not received within 15 days.
6. For those members whom staff has determined are on disability leave and the payments received through their employer are insufficient to allow the correct deduction of member contributions, staff shall send a notice to the member stating that the member:
- (a) Must pay the amount of contributions not correctly deducted while on disability leave;
 - (b) Must pay any assessed interest on the unpaid contributions until repayment is made;
 - (c) Can pay the amounts owed by check(s) while still on leave; and
 - (d) Will have any outstanding amount of contributions and interest owed deducted from their bi-weekly payroll upon return to active status in addition to regular contributions until repayment is completed.

Staff will send a follow-up letter to the member regarding the required repayment of contributions and interest upon determination that the member has either: returned to active service, applied for service or disability retirement or terminated employment.

7. All methods of repayments should be completed no later than three years from the date of the notice to member of the amount owed unless otherwise extended by the CEO.
8. Notwithstanding paragraphs 5, 6, and 7 above, the full amount of the required contributions and interest must be paid prior to the commencement of any benefit payments to the member unless the member had entered into an approved repayment plan which authorizes the automatic deduction of the repayments from the member's benefit payments.

9. If the member withdraws/rolls over funds, staff shall note the under-payment plus accrued interest amount owing in the member's account and that this amount is to be repaid in addition to any future redeposit made by the member.

B. Under-Payment of Member Contributions Discovered After Member Has Left Active Status.

1. The CEO shall confirm the amount of contributions that the member should have paid, the period of time that the under-payment occurred, and the total amount of the under-payment of contributions by the member.
2. With regard to the collection of under-payments in arrears, the amount of the under-payment and the applicable interest on that amount shall be collected. If the under-payment was due to an incorrect pick-up or cost share, or COLA cost share in which the employer paid rather than the member, no interest shall be assessed.
3. Interest shall be assessed at the rate(s) of interest credited to the member's account for the period in which the under-payments were occurring and shall be applied to the outstanding amount due until such time as a repayment arrangement is commenced. Thereafter, the rate of interest during the repayment period shall be the assumed actuarial rate of return applicable at the commencement of the repayment.
4. If the member withdraws/rolls over funds, staff shall note the under-payment plus accrued interest in the member's account and that this amount must be repaid in addition to any future redeposit made by the member.
5. If the member has left funds on deposit or has already retired, staff shall endeavor to recover under-payments and interest by: (a) a lump sum payment from the member, (b) installment payments from the member, (c) offsets to future benefit payments to the member, or (d) a combination of the foregoing, unless the Board, in its discretion and because of legal or practical considerations, determines that other action is warranted.
6. If the member has left active membership and if the CEO believes that considerations of cost effectiveness make it prudent and reasonable to not pursue recovery of under-payments where the cumulative total amount of member contributions underpaid, not including interest, is \$50 or less, then no further action is required.
7. The CEO may, on the advice of legal counsel, compromise the recovery of under-payments when the total amount of under-payment, not including

interest, is \$5,000 or less. Only the Board may compromise claims in which the total amount of under-payment, not including interest, is greater than \$5,000. Among other factors, the likelihood of collection, the cost of collection, the amount of possible recovery, and extreme hardship to the member will be considered by the 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 reduction of the amounts underpaid or interest due.

8. The CEO's collection process shall include a notice to the member setting forth:
 - (a) The total amount of contributions and interest owed and the fact that interest will continue to accrue on the contributions owed until the repayment is made;
 - (b) An agreement to pay the amounts owed with the payment options;
 - (c) A statement that, if the member is receiving a monthly payment, a repayment by equal installments for the amount of the contributions and interest will be deducted from benefit payments over the same length of time that the under-payments occurred and 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 mailed; and
 - (d) The member's right to appeal the collection of the additional contributions and/or collection method and the deadline for such action.
9. If the amount of the under-payment, not including interest, is greater than \$5,000, staff will attempt to contact the member by phone to discuss the contents of the letter before the letter is sent out for delivery.
10. The CEO is hereby authorized to pursue all legal remedies to collect under-payments, including making a claim on an estate or trust, if appropriate.

C. Over-Payment of Member Contributions Discovered While Member Is Still Active.

1. The CEO shall confirm the amount of contributions that the member should have paid, the period of time that the over-payment occurred, and the total amount of the over-payment of contributions.

2. Staff shall promptly notify the employer to correct the inaccuracy on a going-forward basis so that the correct amount of contributions is deducted from the member's bi-weekly pay.
3. Staff shall promptly notify the employer that the member is entitled to a lump sum credit equal to the amount of the over-payment plus the interest credited to the member's account on the over-payment. The adjustment reflecting the credit applicable to future deductions shall be made in the member's pay from their SamCERA participating employer as soon as is reasonably practicable following the confirmation of the over-payment.
4. Staff shall notify the member of the adjustments made to the deductions.

D. Over-payment of Member Contributions Discovered After Member Has Left Active Status.

1. The CEO shall confirm the amount of contributions that the member should have paid, the period of time that the over-payment occurred, and the total amount of the over-payment of contributions.
2. Staff shall ensure that the member receives a lump sum payment equal to the amount of the over-payment plus the interest credited to the member's account on the over-payment. If the member has retired, then the interest credited to the member's account on the over-payment up until the date of retirement shall be calculated, and interest on the overpaid amount accruing after the member's date of retirement shall be calculated using the applicable assumed actuarial rate of return. The payment shall be made as soon as is reasonably practicable following the confirmation of the over-payment and shall be made in a manner that is in compliance with requirements contained in the Internal Revenue Code and applicable Internal Revenue Service regulations.
3. If the member has died prior to payment of the lump sum amount due, the following procedures will be followed:
 - (a) If the member has named a designated beneficiary, the payment will be made directly to the designated beneficiary.
 - (b) If there is no beneficiary but 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 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 SamCERA pursuant to Probate Code Section 13101. In cases where there is no designated

beneficiary and the total amount of over-payment is less than \$50, staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to SamCERA, however, will be considered regardless of size.

III. PROCEDURE FOR RESOLVING BENEFIT PAYMENT INACCURACIES

A. Under-payments to Members Who Withdrew/Rolled Over Funds or Retired.

1. The CEO shall confirm the amount of the under-payment contained in the withdrawal/rollover or monthly benefit.
2. If the member has withdrawn/rolled over an incorrect amount of contributions and interest, staff shall promptly contact the member and remit to the member the amount owed and interest accrued. Interest should be paid at the rate(s) of interest credited to the member's account for the period in which the under-payments were made. The correction shall be on the next Consent Agenda for ratification by the Board.
3. For the under-payment of a monthly benefit, staff promptly shall correct the monthly benefit amount on a going-forward basis and make a lump sum payment of the amount owed in arrears, for up to three years from the date of the discovery of the under-payment, plus the interest that accrued at the applicable assumed actuarial rate of return and staff shall report the correction in the next Consent Agenda for ratification by the Board.
4. If a monthly benefit is no longer being paid, staff shall make a reasonable attempt to pay the amount of the under-payment for up to three years from the date of the discovery of the under-payment, plus interest at the assumed rate of return to the beneficiary, survivor, or estate of the deceased recipient and shall report such action in the next Consent Agenda for ratification by the Board.

B. Over-payments to Members Who Withdrew/Rolled Over Funds or Retired.

1. The CEO shall confirm the amount of the over-payment contained in the withdrawal/rollover or monthly benefit.
2. For withdrawn/rolled over contributions and interest, staff shall contact the member and request payment of the amount of the over-payment plus interest at the rate of the applicable assumed actuarial rate of return from date of withdrawal/rollover to the completion of the repayment. If payment is not made, the collection procedure is set forth in paragraph 5 below.

3. For the over-payment of a monthly benefit, staff shall correct the monthly benefit on a going-forward basis at the earliest practical time after confirming the inaccuracy.
4. For the over-payment of a monthly benefit, staff shall take all reasonable steps to recover the full amount of all past over-payments made within three years from the date of the discovery of the over-payment, interest shall accrue from the dates of the over-payments until the completion of the repayment at the applicable assumed rate of return. Collection of over-payments that are subject to the provisions of paragraph 12, shall not be limited to three years.
5. Staff shall endeavor to recover over-payments by: (a) a lump sum payment from the member, (b) periodic installment payments from the member, (c) offsetting the amount to be recovered against future benefits, or (d) a combination of these methods; unless the Board, in its discretion and because of legal or practical considerations, determines that another action is warranted, including but not limited to repayment by the employer. The member shall have a right to appeal the collection of the over-payment amount and/or collection method and the deadline for such action.
6. If the CEO believes that considerations of cost effectiveness make it prudent and reasonable to not pursue recovery of over-payments where the cumulative total amount of the over-payment, not including interest, is \$50 or less, then no further steps shall be taken.
7. The CEO shall have authority, on the advice of legal counsel, to compromise recovery of over-payments when the total amount of over-payment, not including interest, is \$5,000 or less. Only the Board may compromise claims in which the total amount of over-payment, not including interest, is greater than \$5,000. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and the extreme hardship to the member will be considered by the 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 overpaid.
8. Upon confirmation of an over-payment, staff shall send a letter by certified mail, return receipt requested, or by express delivery service, to the member advising the member of the over-payment and proposing a repayment schedule, as follows:
 - (a) The letter will identify the circumstances of the over-payment and the fact that adjustments will be made to all future benefit payments.

- (b) The letter will request payment of the amount overpaid and interest, subject to the provisions of this Policy.
 - (c) The letter will include an agreement to repay excess benefits and interest and a consent form for the spouse, survivor, or beneficiary, if applicable.
 - (d) The agreement to repay excess benefits and interest will provide options including, but not limited to:
 - Option 1 — equal installments over the same length of time that the over-payments occurred, with interest that accrued during the over-payment period and during the repayment period.
 - Option 2 — lump sum payment for the full amount overpaid, with accrued interest that accrued during the over-payment period and during the repayment period.
 - Option 3 — reduction of monthly benefit until the over-payment is paid in full, with interest applied during the over-payment period and during the repayment period.
 - (e) The letter and agreement to repay excess benefits may provide that Option 3 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 mailed.
 - (f) The letter shall inform the member of the right to appeal the collection effort and/or collection method and the deadline for such action.
9. If the amount of the over-payment, not including interest, is greater than \$5,000, staff will attempt to contact the member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
10. Staff may pursue all legal remedies to collect over-payments, including making a claim on an estate or trust, if appropriate.
11. Upon the death of the member before full repayment has been made, staff shall endeavor to pursue a claim or claims against the member's estate, survivors, heirs, and/or beneficiaries to recover the unpaid amounts.

12. In cases where the inaccuracy in the calculation of the member's monthly allowance or other benefits was made as a result of either (1) fraudulent reports for compensation made, or caused to be made, by the member for his or her own benefit or (2) the member caused his or her final compensation to be improperly increased or otherwise overstated at the time of retirement and the system applied that overstated amount as the basis for calculating the member's monthly retirement allowance or other benefits, the correction of this inaccuracy shall be subject to the procedures sets forth in Government Code section 31529.

IV. Chief Executive Officer Implementation Authority

In the implementation of this policy and procedure, the Chief Executive Officer has the authority to make minor adjustments in order that such implementation is accomplished in a fair and reasonable manner consistent with the objectives set forth in Section I. Interest may be waived on inaccuracies caused by systemic constraints or events.