

CORRECTION OF BENEFIT PAYMENT ERRORS

I. PURPOSE

To establish criteria and procedures for resolving benefit overpayment or underpayment errors to members and beneficiaries in compliance with Internal Revenue Code section 401(a) and IRS correction guidance as set forth in Revenue Procedure ("Rev. Proc.") 2016-51 and amendments thereto. It is the intent of the Board of Retirement ("Board") to fulfill its fiduciary duties to properly pay benefits pursuant to plan terms and to safeguard retirement fund assets by making every reasonable effort to correct errors in a timely manner.

This policy is designed to address substantial errors and does not apply to minor adjustments that occur during the routine administration of the retirement association and are corrected within a reasonable time. For the purposes of this policy, unless otherwise noted, the term "member" includes members of SCERA and their beneficiaries and estates.

II. POLICY

- A. **Discovery, Investigation, and Correction:** Upon discovery of an error, SCERA staff shall conduct an investigation of the error to determine the cause of the error. SCERA staff shall immediately make necessary changes to the member account in order to correct the error prospectively.
- B. **Notice to Member:** As soon as administratively practical, SCERA staff shall alert the member of the error and of the corrective action to be taken. The notice should provide an explanation of the error and corrective action to be taken. The notice will also provide information regarding the member's right to appeal and the process for an appeal. Notice via First Class U.S. Mail is sufficient for service of the notice.
- C. **Extensive Errors:** The Board retains the right under this policy to determine appropriate correction of errors that affect a significant number of members. Correction of these errors shall be consistent with IRS guidelines.
- D. **Time Limitations:** SCERA will use its best efforts to correct fully all benefit payment errors in a timely and expeditious manner. Full correction includes recovery of all overpaid benefits and payment of all underpaid benefits (including interest in accordance with Section II.G. of this policy) regardless of when the error was made. SCERA recognizes that various limitations periods apply to the

commencement of court actions for recovery of overpaid benefits. Government Code section 31539 allows for a ten (10) year statute of limitations for commencing an action when the error was due to the fraud of the member or the member causing his or her compensation to be improperly increased or overstated at the time of retirement. An action not based on the fraud or misrepresentation of the member should be commenced within three (3) years of the improper payment or the discovery of the error, whichever is later.

Notwithstanding the above, recovery of an overpayment of benefits through an offset of future benefits is not an action in court and is not subject to the above-referenced limitations periods.

E. **Offsets:** The IRS has determined that an offset to future benefits is an appropriate means of recovering an overpayment of benefits. (Rev. Proc. 2016-51, § 6.06(3); Rev. Proc. 2016-51, Appendix B, § 2.04). Recovery of overpaid benefits through an offset to future benefits is not an assignment under Government Code section 31452 because the IRS has determined that an overpayment is an error, which can be recouped, including through a reduction in future benefits. Further, Government Code section 31539 specifically permits adjustment of future benefits to recover overpayments in cases of fraud or member wrongdoing. As such, SCERA may offset future benefits as a means to recover overpayments, regardless of the cause.

F. **Correction Period:** SCERA shall correct all underpayments of benefits as soon as administratively practicable after discovery of the error by making a lump sum payment to the affected member with interest on the accrued amount, if appropriate.

Generally, SCERA will attempt to recover overpaid benefits as quickly as possible. SCERA and the Board recognize, however, that immediate recovery of overpaid benefits may cause undue hardship on the affected member. Therefore, the SCERA Chief Executive Officer (“CEO”) is authorized to approve installment payments over a reasonable repayment period. Examples of reasonable repayment periods include, but are not limited to, the plan fiscal year or the period over which the error occurred, but in no event shall the repayment period exceed the member’s actuarially expected life span.

G. **Interest:** Interest on underpaid benefits will be paid by SCERA at the same rate as interest is credited to member contribution accounts. Interest on underpaid benefits will only accrue twice per year at the same time interest is credited to member contribution accounts.

Interest on overpaid benefits will be assessed by SCERA at the actuarial assumed rate of return at the time of the discovery of the error. Interest may be waived if the member completes full repayment of the overpayment within SCERA's plan fiscal year. Subject to section H below, the CEO may reduce the rate of interest assessed against the member when the overpayment of benefits was due to the mistake or inadvertence of the member, SCERA, or the member's employer. The interest rate assessed on the recovery of overpaid benefits should not be reduced if the overpayment is due to fraud of the member or by the member purposefully causing an improper increase or overstatement of compensation at the time of retirement.

- H. **Staff Authority:** For underpaid benefits in the amount of \$10 or less, SCERA has discretion to determine whether the location of the payee and making of the payment is administratively practical.

The CEO may waive recovery of any overpaid benefits in amounts less than \$100 on the CEO's own authority after reasonable collection efforts have been exhausted.

On the CEO's own authority, the CEO may compromise the amount of the principal, reduce or eliminate interest, and / or extend the repayment period for overpaid benefits in the amount of \$10,000 or less. The CEO will take into consideration whether the recovery causes a severe hardship on the member and the cost and likelihood of success of collection actions. The CEO may also direct staff to refer the matter to a collection agency for recovery of the overpaid benefits.

For amounts over \$10,000, the CEO will report the error to the Board at the Board's next public meeting. The report will provide the Board with a synopsis of the cause of the error and suggestions for recovery. The Board may then compromise the principal amount, reduce or eliminate interest, and / or extend the repayment period. The Board will take into consideration whether the recovery causes a severe hardship on the member and the cost and likelihood of success of collection actions, including potential legal defenses thereto. The Board may direct staff to refer the matter to a collection agency for recovery of the overpaid benefits (plus interest).

- I. **Collection Limits:** SCERA recognizes that a correction of benefits and repayment of overpaid benefits may be a hardship for SCERA members. The IRS requires that SCERA make full correction of errors through reasonable means. The monthly amount of offset applied to a member benefit for recovery of

overpaid benefits shall be limited to 20% of the member's gross benefit amount but in no event shall the offset be reduced such that the repayment period exceeds the member's actuarially expected life span.

- J. **Reporting:** At least annually, the CEO will report to the Board at a regularly scheduled public meeting the amount, cause, and recovery status of any overpaid benefits exceeding \$100. The report may be provided as part of the consent agenda. If there are no overpaid benefits exceeding \$100 the report may be provided as part of the communications section of the regular agenda.
- K. **Employer Notice:** At least annually, SCERA will send a report to the administrative office of each plan sponsor whose retired employees have received a benefit overpayment providing the amount, cause, and recovery status of any overpaid benefit. The notice will also contain information regarding the employer's responsibility for any amounts that SCERA is unable to recover from the member.
- L. **Due Process and Appeals:** Members shall have the right to appeal any benefit corrections and overpayment recovery determinations made by SCERA staff. Appeals will be governed by the SCERA Benefit Appeals Policy and Process and by the SCERA Administrative Hearing Rules and Procedures.

III. REVIEW

The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate.

IV. HISTORY

This policy replaces and supersedes the Overpayment Policy that was adopted by the Board on May 21, 2009. The Board adopted this policy on October 25, 2018.

Reviewed and revised February 18, 2021.