

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)
POLICIES AND PROCEDURES GOVERNING THE UNDERPAYMENT OF RETIREMENT BENEFITS

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

Members have a right to accurate pension benefit payments. Except as determined by a court of law or this Board pursuant to this policy, no Member has the right to receive or retain retirement benefit payments that exceed the amounts to which a Member is entitled, and no Member should be deprived of any benefit payments that he or she is entitled to receive. Subject to all applicable laws, it shall be FCERA's policy to make every reasonable effort to recover from a Member the amount of any overpayment of benefits, and to remit to a Member the amount of any underpayment of benefits, consistent with this policy and the procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of benefits, and within a reasonable period of time after written notification to the affected Member, FCERA will either collect a lump sum repayment from the member or it will adjust future benefit payments to the Member to reflect the correct total amount to which the Member is entitled, as indicated below.

These policies and procedures are designed for use when calculation and other errors affect an individual member's retirement benefits. 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 is appropriate under all the circumstances.

In the event of any inconsistency between applicable law and these Policies and Procedures, the law shall take precedence.

I. Overpayments To Members

- 1) FCERA shall take all reasonable steps to recover the full amount of all overpayments, with "appropriate interest," subject to the provisions of this policy and applicable law. If the overpayment was due to inaccurate information provided to FCERA by the member, appropriate interest shall be FCERA's actuarially assumed rate of return that was applicable during the period in which the overpayments were made, running until such amounts are fully repaid. If the overpayment was the result of an error by FCERA or the member's employer, appropriate interest shall be 3% per annum during the period in which the overpayments were made, running until such amounts are fully repaid.
- 2) FCERA will recover overpayments either by a lump sum payment from the Member or by offsetting the amount to be recovered against future benefits, over a period of time as determined by the Board, 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 overpayments only where the cumulative total amount overpaid to the Member is \$50 or more. Accordingly, the Administrator is authorized to not seek recovery of any overpayments where the total amount overpaid to the Member less than \$50.
- 4) The Administrator shall have authority, on the advice of legal counsel, to compromise recovery of overpayments when the total amount of overpayment, not including interest, is less than \$5,000. Only the Board may compromise claims in which the total amount of overpayment, 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 Administrator 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.
- 5) In cases where there is no evidence that the overpayment resulted from the fraud or dishonest conduct by the member, FCERA will only seek recovery of amounts paid to the member for the three years immediately before the error was corrected. Considering all relevant factors (including collection issues and principles of equity), the Board finds that seeking only three years of overpayments under those circumstances constitutes “reasonable steps” to recover the full amount of the overpayments. In cases where there is evidence that the overpayment resulted from fraud or dishonest conduct by the member, the Board reserves all rights to seek all amounts overpaid, plus the maximum amount of recoverable interest under law. See CERL § 31539. The Board shall determine whether the member engaged in fraud or dishonest conduct based on all of the facts available to it.
- 6) The Board adopts the following procedures for accomplishing the recovery of overpaid benefits:
 - a) Upon discovery of an overpayment, FCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the Member advising the Member of the overpayment and proposing a repayment schedule, as follows:
 - i. The letter will request payment to FCERA of the amount overpaid, subject the provisions of this Policy.
 - ii. The letter will include an agreement to repay excess benefits and a consent form for the spouse or beneficiaries, if applicable.
 - iii. The agreement to repay excess benefits will provide three options:
 - Option 1 – equal installments over the same length of time that the overpayments occurred, with appropriate interest (as that phrase is defined

in No. 1 above) applied during the overpayment period and during the repayment period.

- Option 2 – lump sum payment to FCERA for the full amount overpaid, with appropriate interest (as that phrase is defined in No. 1 above) applied during the overpayment period.
- Option 3 – reduction of monthly benefit to zero until the overpayment is paid in full, with appropriate interest (as that phrase is defined in No. 1 above) applied during the overpayment period and during the repayment period.

- iv. The letter and agreement to repay excess benefits will 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 delivered.
- b) If the amount of the overpayment, not including interest, is \$5,000 or more, FCERA 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.
 - c) FCERA may pursue all legal remedies to collect overpayments, including making a claim on an estate or trust, if appropriate.
 - d) FCERA will maintain a permanent record of all amounts of overpayments and the repayment to FCERA of those overpayments.

II. Underpayments To Members

- 1) When FCERA has underpaid benefits, the Member shall be entitled to a prospective adjustment to his or her retirement benefits necessary to correct the underpayment, as well as a lump sum payment for all past underpayments, with interest at FCERA's actuarially assumed rate(s) of return throughout the applicable period of underpayment. Interest shall accrue on each underpayment amount from the date of the underpayment to the date of the lump sum corrective payment. The payment shall be made as soon as is reasonably practicable following FCERA's discovery of the underpayment.
- 2) If a Member who was underpaid benefits has died prior to payment of the lump sum amount due, the following procedures will be followed:
 - a) Member With Designated Beneficiary
 - i. If the Member has named a designated beneficiary, the payment will be made directly to the designated beneficiary. See CERL Section 31452.7.
 - b) Member Without Designated Beneficiary

- i. 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).
 - ii. If final distribution of the estate has already been made, FCERA 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.
 - iii. 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 FCERA. See Prob. Code Section 13101.
 - iv. FCERA 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).
 - v. If, after taking the above steps, FCERA staff has not been able locate a person entitled to payment, FCERA 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 appears to claim the funds, the Board will consider such claims on a case-by-case basis. See CERL Section 31783.5(c).
 - vi. FCERA will maintain a permanent record of all amounts of outstanding refunds of underpayments and any amounts that have been transferred into the pension reserve fund.
 - vii. In cases where there is no designated beneficiary and the total amount of underpayment is less than \$50, FCERA staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to FCERA, however, will be considered regardless of size.
- 3) Underpayments of \$5 or less will only be refunded at the request of the member.

III. Policy Review

- 1) The Board shall review this policy at least every 3 years to ensure that it remains relevant and appropriate.

IV. Policy History

- 1) This policy was adopted by the Board on September 3, 2003.

- 2) The Board of Retirement reviewed this policy on December 16, 2015.
- 3) The Board of Retirement reviewed this policy on July 20, 2016.

V. Secretary's Certificate

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

July 20, 2016

Date of Action:

Donald C. Kendig

By: Retirement Administrator