

ERROR CORRECTION POLICY

I. PURPOSE

The purpose of this policy is to establish criteria and a framework for resolving administrative errors that result in payment or contribution errors made to, or by, members and their beneficiaries (referred to hereinafter collectively as “member”). When a member receives less than the full amount of their monthly retirement or survivor allowance or other benefit payment, the system has made an underpayment. When a member receives a benefit payment that is higher than the amount of their monthly retirement or survivor allowance or other benefit payment (“benefit”), the system has made an overpayment. When a member has overpaid or underpaid statutory contributions for MCERA benefits that payment can also result in an underpayment or overpayment with respect to MCERA. These types of benefit and contribution errors can be caused in a variety of ways, including incorrect computation of benefits, errors in statutory interpretation, and other miscellaneous causes.

II. OBJECTIVES

The primary objective of this policy is to pay benefits, protect fund assets, and collect contributions in accordance with applicable law. It is intended that corrections be made in accordance with the Internal Revenue Service (IRS) Employer Plans Compliance Resolution Program. If an error in the payment of benefits or contributions has been identified, it should be corrected prospectively as soon as practicable consistent with the procedures set forth in this policy and applicable law. Retroactive corrections will also be made as set forth in this policy.

III. POLICY GUIDELINES

When an underpayment of a benefit has occurred, MCERA will prospectively adjust the amount of the member’s earned benefit to the correct amount starting from a Corrective Action Date (“Corrective Action Date”), and will pay an amount equal to the member’s underpayments that are within the three year statute of limitations of Code of Civil Procedure section 338 which applies to any right of action to recover these underpayments from that Corrective Action Date, plus interest at the assumed rate of return during the error correction period (“interest on benefits”). The Board or, in the case of an initial determination, the Executive Director may in their discretion, pay underpayments beyond the three year statute of limitations to the member when based on direction from the IRS, a court of competent jurisdiction, and/or upon application of legal or equitable principles which, in the Board’s or Executive Director’s judgment, are warranted in the circumstances presented.

When an overpayment of a benefit has occurred, MCERA will prospectively adjust the amount of the member’s earned benefit to the correct amount and will seek to recover the portion of the

overpayment that is collectible under California law, where reasonable and appropriate to do so as set forth in this policy.

When the error involves correction of underpaid or overpaid member contributions, MCERA will correct the contribution amount on a prospective basis, and will collect underpaid, and return overpaid, contributions as follows. In the event an active or deferred member underpaid his or her contributions, the full underpaid amount must be collected, plus interest, in order for the member to be entitled to his or her benefits under the CERL. In the event an active or deferred member overpaid member contributions, the full overpayment amount, plus interest, will be refunded to such member. In the event of any underpaid contributions by a retired member, the full member contribution underpayment will be recouped, plus interest, to support the continuing payment of ongoing monthly benefits supported by those contributions. In the event of overpaid contributions by a member who has since retired, the full amount of overpaid contributions will be refunded to the member, plus interest on contributions (as defined below), with any offset necessary to recover overpaid benefits, if any. The member crediting rate during the period(s) to be corrected shall be used to determine interest due on contributions returned to, or collected from, the member (“interest on contributions”).

When the overpayment of a benefit is the result of an inadvertent error in statutory interpretation or similar inadvertent error by MCERA that would, in the Board’s or, in the case of an initial determination, the Executive Director’s judgment, subject MCERA to valid equitable defenses and potential fiduciary claims under California law by a member, MCERA will not seek to recover such overpayments unless ordered to do so by the IRS and/or a final, non-appealable, order of a court of competent jurisdiction. *See City of Oakland v. Oakland Police and Fire Retirement System (2014) 224 Cal.App.4th 210; Blaser v. State Teachers’ Retirement System (2019) 37 Cal.App.5th 349* (“fiduciary and estoppel determination”).

When the overpayment would, in the Board’s or, in the case of an initial determination, in the Executive Director’s judgment, not subject MCERA to valid equitable defenses or fiduciary claims under California law, the correction will include a retroactive correction from the member that is limited to the amount that is recoverable under the applicable statute of limitations, which is typically three years of overpayments as provided under Code of Civil Procedure section 338(a) and/or (d).¹

Any portions of an overpayment of a benefit or underpayment of contributions, including applicable interest, that are not recovered will be added to the Unfunded Actuarial Accrued Liability (“UAAL”).

¹ This process shall not apply for overpayments made as a result of a members’ fraudulent report of compensation or of a member taking some action to cause his or her retirement benefit to be improperly increased or overstated. In such situations, MCERA will follow the process outlined in Government Code Section 31539. In addition, this three-year policy limitation does not constrain MCERA from offsetting all overpaid amounts made to members from any lump sum refunds made to those members that are related to the overpayments.

IV. PROCESS FOR CORRECTING ERRORS IN BENEFITS AND/OR CONTRIBUTIONS

A. CORRECTION NOTICE

The Board delegates to the MCERA Executive Director the authority to make the initial determination regarding whether an underpayment or overpayment has occurred, whether legal or equitable defenses or principles apply, and the correction to be implemented in accordance with the policy directions set forth herein. Staff shall notify the member by written "Correction Notice" of the benefit or contribution underpayment or overpayment error and how it will be corrected.

1. UNDERPAYMENT OF BENEFITS OR MEMBER CONTRIBUTIONS

In the event of an underpayment of a benefit to the member, the Correction Notice shall inform the member that the correction shall be made with the next available benefit payment after the Correction Notice has been sent, and the amount of the lump sum payment to reimburse for a stated number of years of past underpayments, typically up to three years before the Corrective Action Date with respect to underpaid benefits, plus interest on benefits.

In the event of any underpayment of contributions by the member, the Correction Notice shall inform the member that the correction will commence, if practicable, with the next available payroll if the member is in active service or otherwise for deferred members, and that full contribution underpayment amount, plus interest on contributions, will need to be recouped to be entitled to the monthly benefits supported by those contributions. Unless circumstances reasonably warrant otherwise, the correction applicable to underpaid contributions should occur over the same period of time as the error occurred.

2. OVERPAYMENT OF BENEFITS OR MEMBER CONTRIBUTIONS

In the event of an overpayment of a benefit to the member that is not subject to a fiduciary and estoppel determination, the Correction Notice shall inform the member of the amount of the prospective correction, the total amount previously overpaid to the member over the three year period prior to the correction ("3-year correction amount"), and the amount of any interest charged. In addition, the Correction Notice shall inform the member that the correction shall be made with the next available benefit payment after the Correction Notice has been sent. The Correction Notice shall identify the expected duration of the correction to recover the 3-year correction amount (plus interest if applicable), which if practicable should occur over the same period of time as the error occurred. Finally, the Correction Notice shall note that the limited correction will become subject to any order by the IRS and/or a final, non-appealable, order of a court of competent jurisdiction to make additional corrections.

With respect to overpayments of a benefit that are subject to a fiduciary and estoppel determination, the Correction Notice shall specify the amount of the prospective correction, and that MCERA has decided for fiduciary and equitable reasons not to recover past overpayments from the member for periods proceeding the earlier of the Correction Notice

or Board action requiring such correction, but instead to include it in the UAAL, unless ordered to recoup it from the member by the IRS and/or a final, non-appealable, order of a court of competent jurisdiction.

In the event of an overpayment of contributions by a member, the Correction Notice shall inform the member of the total amount of overpaid contributions and the amount of the lump sum payment to be reimbursed to the member, which, unless application of an exception is warranted, should be equal to the amount of overpaid contributions by the member (plus interest on contributions) offset against any overpaid benefits the member may have received (plus interest on benefits), if any.

Members will be notified in the Correction Notice that if they have questions or objections, they should contact the Executive Director and provide any information relevant to the determination in writing, within 30 days of receipt of the Correction Notice. Staff will evaluate any information received before making any prospective corrections to the member's benefits and the Executive Director may change his or her initial determination if appropriate.

B. ADMINISTRATIVE APPEAL

The Correction Notice will also inform members that they may submit an administrative appeal to the Executive Director under MCERA's Administrative Hearings Policy to dispute any aspect of the proposed correction. The Correction Notice shall also specify the deadline for filing an administrative appeal.

C. PROCEDURE FOR COLLECTION OF BENEFIT OVERPAYMENTS/ UNDERPAID MEMBER CONTRIBUTION

The procedure for collection of overpayments of benefits or collection of an underpayment of contributions will be as follows.

1. If the member agrees to the proposed correction regarding the collection of overpaid benefits or underpaid contributions, the member and MCERA will enter into an agreement reflecting the correction and the method of re-payment of the underpaid contributions or overpaid benefits ("Payment Agreement") and subject to any limiting requirements of the IRS or final, non-appealable, order of a court of competent jurisdiction.
2. If the member files an administrative appeal, the Board will follow its Administrative Hearing Policy.
3. Upon the conclusion of any administrative proceeding, the Board will implement the decision. If the member's appeal was denied, then the Board will collect benefit overpayments and/or underpaid contributions in accordance with this policy. The Board may also meet in closed session to consider whether to initiate any litigation that it decides is reasonably necessary to collect overpayments.

V. AMOUNTS NOT RECOVERED

Unrecovered overpayments of benefits and underpayment of contributions become part of the UAAL. To protect the privacy rights of retirees, Staff will report to the Board the aggregate dollar amount of unrecovered benefit overpayments and contribution underpayments. Such report shall be made annually.

VI. DELEGATION OF AUTHORITY

The Board hereby delegates to the MCERA Executive Director the authority to take all steps necessary or desirable to implement the terms and conditions of this Policy. The Board also delegates to the Executive Director the authority to approve and implement Payment Agreements that involve correction amounts of less than \$10,000 without obtaining approval of the Board. All other Payment Agreements must be approved by the Board.

VII. POLICY REVIEW

The Board shall review the Benefit Correction Policy at least every three (3) years to ensure that it remains relevant and appropriate.

VIII. POLICY HISTORY

The Board adopted its Overpayment Policy on February 15, 2012.

The Board reviewed and revised the Overpayment Policy on March 20, 2013.

The Board reviewed and revised the Overpayment Policy on January 19, 2016.

The Board reviewed and replaced the Overpayment Policy with the Error Correction Policy on August 19, 2020.

The Board revised the Error Correction Policy on July 17, 2024.