

OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

Purpose and Background

1. The purpose of the Orange County Employees Retirement System (“OCERS,” “System,” or “Plan”) *Overpaid and Underpaid Plan Benefits Policy* (“policy”) is to provide a framework that the System can use as a basis for resolving erroneous payments of Plan benefits to members and their beneficiaries. In the event that an overpayment is the result of a felony conviction OCERS Administrative Procedure (OAP) *Felony Forfeitures* shall be used as a basis for resolution. The OCERS Board of Retirement (“Board”) is charged with the responsibility of administering the System in a manner that assures appropriate and prompt delivery of benefits and related services to members and their beneficiaries and of managing the assets in a prudent manner. The Internal Revenue Service (“IRS”) requires that operational failures be corrected in a prompt, reasonable, and consistent manner that attempts to place the retirement system in the position it would have been in had the erroneous payment not occurred.

Policy Objectives

2. Members and their beneficiaries (herein referred to as “members”) have a right to accurate retirement benefit payments. 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 may be deprived of any benefit payments that he or she is entitled to receive. Subject to all applicable laws and consistent with this policy and the procedures established by the Board, it shall be OCERS’ policy to make every reasonable effort to recover from a member the amount of any overpaid Plan benefits, and remit to a member the amount of any underpaid Plan benefits.

Policy Guidelines

3. After discovery of overpaid or underpaid benefits, and within a reasonable period of time after written notification to the affected member, OCERS will correct the benefit payment amount prospectively to prevent additional overpayments or underpayments, and will pay to the member in a lump sum, or collect from the member through lump sum or installment payments, the amounts to which the member or the Plan is entitled in accordance with this policy and applicable law.
4. 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 the circumstances.
5. In the event of any inconsistency between applicable law (including IRS rules and guidance) and these policies and procedures, the law shall govern.

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Policy Procedures for Overpaid Benefits

6. When an overpayment of Plan benefits is discovered more than ninety (90) days after the member/payee's initial benefit payment, OCERS will first adjust the benefit payment prospectively to reflect the correct benefit amount and to prevent additional overpayments. OCERS will also take all reasonable steps to recover the full amount of all overpayments, going back to the inception of the error, and recouping "appropriate interest," as defined in section 7 below, during the period in which the benefit overpayments were made and also during any repayment period (*i.e.*, applied to the outstanding amount due until fully repaid).
7. *Appropriate Interest*
 - a. "Appropriate interest" means an interest amount determined using the System's actuarially assumed rate of return as of the date OCERS sets for commencing repayment.
 - b. In cases where there is evidence that the benefit overpayment resulted from fraud or dishonest conduct by the member/payee or because the member/payee provided, or caused to be provided, inaccurate information to OCERS or the member's employer, then "appropriate interest" shall be recouped from the member/payee.
 - c. In cases other than those described above in Section 7.b, "appropriate interest" shall be recouped from the member's employer.
8. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpaid benefits only where the cumulative total amount of overpaid benefits is \$250 or more. Accordingly, OCERS is authorized to not seek recovery of any such overpaid benefits where the total amount overpaid to the member is less than \$250.
9. *Time Period for Installment Payments.* When recovering benefit overpayments, the following apply:
 - a. *Director of Member Services:* When the total amount of such overpaid benefits, not including interest, is \$10,000 or less, the Director of Member Services shall have authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
 - b. *CEO:* Regardless of the amount of the Plan's claim against the member, the CEO shall have the authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
10. *Compromising claims:* The amount of the Plan's claim for overpaid benefits is the difference between the amounts actually paid to the member during the overpayment period and the amounts that should have been paid, together with "appropriate interest" from the dates of the actual overpayments to the date(s) the correction is effective. 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 a claim may include a different method of repayment than is otherwise provided

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by this Policy and/or forgiveness or partial forgiveness of principal and/or interest, subject to applicable IRS rules and guidance.

- a. When the total amount of the Plan's claim against the member, not including interest, is \$1,000 or less, the CEO, on the advice of legal counsel, shall have the authority to compromise the claim.
- b. Only the Board may compromise claims in which the total amount of such overpaid benefits, not including interest, is greater than \$1,000.

11. The Board adopts the following procedures for accomplishing the recovery of overpaid Plan benefits:

- a. Upon discovery of the benefit overpayment, OCERS will send a letter by certified mail, return receipt requested, or by express delivery service, to the member/payee. Subject to the provisions of this Policy, the letter will provide the following information to the member/payee regarding the overpaid benefits:
 - i. Provide notice of the prospective adjustment to the benefit payment (to reflect the correct amount);
 - ii. Request payment to OCERS of the amount of overpaid benefits with appropriate interest as defined in section 7, above; and
 - iii. Unless otherwise determined by the Board, the CEO, or the Director of Member Services (see sections 9.a. and 9.b., above) or, if a repayment plan for a longer period is needed due to the limitation described in section 6, above, the letter will set a repayment plan with two options:
 - *Option 1* – equal installments deducted from the member/payee's monthly benefit over the same length of time that the overpaid benefits occurred, with "appropriate interest" (as that phrase is defined in section 7, above) applied during the repayment period; and
 - *Option 2* – lump sum payment to the Plan for the full amount overpaid, with "appropriate interest" (as that phrase is defined in section 7, above) applied during the overpayment period.
- b. Notwithstanding the above, any reduction in the member/payee's ongoing monthly benefit to recover overpayments will be limited to a maximum of 15% of the corrected gross monthly benefit unless the member/payee requests a higher reduction. The balance due will be paid over time, subject to this limitation.
- c. OCERS may pursue all legal remedies to collect such overpaid Plan benefits, including making a claim on an estate or trust. In addition, if the member dies before the full amount of principal and interest is paid, OCERS may recover the remaining principal and interest from any lump sum amount OCERS is obligated to pay to the member's estate or named beneficiaries of the member; provided, however, OCERS shall not seek to recover any such remaining amounts from any continuation payments made to a surviving spouse or an optional beneficiary of the member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.

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- d. OCERS will maintain a permanent record of all amounts of such overpaid Plan benefits and the repayment to OCERS of those overpaid benefits. Every year, for cases involving benefit overpayments, the Director of Member Services shall provide a report to the Board.
- e. To the extent OCERS is unable to recoup overpaid Plan benefits from the member/payee, any shortfall will be recouped from the employer as part of the annual actuarial valuation process.

Policy Procedures for Underpaid Benefits

12. When the Plan has underpaid benefits to the member, and the underpayment is discovered more than 90 days after the member/payee's initial benefit payment, the member shall be entitled to a prospective adjustment to his or her retirement benefits to reflect the correct benefit amount. In addition, except as provided in Section 14, below, the member will be entitled to a lump sum payment for all past amounts owed as a result of the error, with interest compounded annually at the rate of 3%. The payment shall be made as soon as administratively feasible.

13. If a member who was underpaid benefits has died prior to payment of the lump sum amount due, the payment, including interest, will be made according to OCERS' standard procedures for paying residual amounts following the death of the member (*e.g.*, to the designated beneficiary, estate, personal representative, trustee of the member trust, etc.).

- a. If, after following its standard procedures and applicable IRS guidance, Plan staff has not been able to locate a person entitled to payment, the Plan 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 or the CEO will consider such claims on a case-by-case basis.
- b. The Plan will maintain a permanent record of all amounts of outstanding refunds of underpaid benefits and any amounts that have been transferred into the pension reserve fund.

14. If the total amount that the Plan owes to the member, is \$75 or less, the Plan is not required to make the corrective distribution if, in the judgment of the CEO in consultation with legal counsel, the reasonable direct costs of processing and delivering the distribution to the member would exceed the amount of the distribution.

Administrative Review

15. A member/payee may request administrative review of any decision regarding corrective actions that the Plan takes with respect to recovering and/or returning over and underpayments of plan benefits.

The review process will generally follow the same pattern as the review process for benefit determinations pursuant to the Board's Administrative Review and Hearings Policy.

- a. Overpayment collection efforts will be stayed, but benefits will be prospectively adjusted to prevent additional overpayments, during the pendency of the administrative review process; provided, however, that the Board shall have the discretion to suspend implementing its

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recovery from the member in whole or in part during any ensuing court action. Interest will continue to accrue on all amounts owed to OCERS during the administrative review process and litigation.

Policy Review

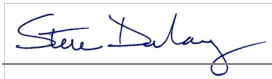
16. The Board will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

Policy History

17. This policy was adopted by the Board of Retirement on May 16, 2016 and amended on October 21, 2019 and _____, 2021.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney
Secretary of the Board

11-15-2021

Date