



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 12

**MEETING DATE:** May 15, 2024

**SUBJECT:** Error Correction Policy

**SUBMITTED FOR:** ☐ Consent ☒ **Deliberation and Action** ☐ **Receive and File**

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### **RECOMMENDATION**

Approve amendments to Error Correction Policy for clarity and conformity with IRS regulations.

### **PURPOSE**

This item supports Strategic Management Plan goals regarding transparency, efficiency, and compliance with laws and regulations, and effective oversight of Plan administration.

### **DISCUSSION**

In September 2020, the Board approved its Error Correction Policy, formalizing the traditional framework for correcting errors in connection with the payment of member benefits and collection of member contributions. The policy was intended to publicly educate members about their rights and responsibilities in the administrative process, memorialize best practices and criteria for staff to guide decision-making during that process, and to demonstrate SCERS' commitment to compliance with IRS rules regarding error correction by a tax-qualified retirement plan.

Pursuant to SCERS' practice of reviewing and refreshing policies every three years, Staff has re-evaluated the policy to consider whether any amendments are necessary due to legal changes or practical experience. The existing policy, adopted as part of the Board's implementation of the California Supreme Court's July 2020 *Alameda* decision, is dense and difficult to follow. The policy also does not afford SCERS with sufficient discretion to compromise or forego nominal overpayments as allowed by the IRS. The IRS has also issued new compliance procedures since SCERS' policy was enacted in September 2020.

The proposed revisions concisely summarize the purpose of the Error Correction Policy, streamline the Standards and Procedures for easier consumption by SCERS members, and update the appropriate legal authorities. The Board's implementation of the *Alameda* corrections is not affected and is expressly excluded from amendments to the policy.

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Under clarifying amendments to the policy, the Chief Executive Officer will be authorized to take necessary or appropriate corrective measures in consideration of clearly identified factors, and further authorized to negotiate repayments and pursue legally appropriate collection actions in consultation with the General Counsel. Members are required to be provided with adequate notice and afforded the opportunity to pursue an administrative appeal. Finally, annual reports will be made to the Board regarding the status of correction actions, including any agreements to compromise within the CEO's delegated authority, and requests for discharge of uncollectable overpayments in accordance with the advice of the General Counsel and Chief Operations Officer.

### **ATTACHMENTS**

- Board Order
- Redlined version of policy with proposed amendments
- Clean version of policy with proposed amendments

Prepared by:

/s/

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Jason R. Morrish  
General Counsel

Reviewed by:

/s/

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Eric Stern  
Chief Executive Officer



# **Retirement Board Order**

## **Sacramento County Employees' Retirement System**

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**Before the Board of Retirement  
May 15, 2024**

**AGENDA ITEM:**

### **Error Correction Policy**

THE BOARD OF RETIREMENT hereby approves Staff's recommendation to approve amendments to Error Correction Policy for clarity and conformity with IRS regulations.

I HEREBY CERTIFY that the above order was passed and adopted on May 15, 2024 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES  
(Present but not voting):

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James Diepenbrock  
Board President

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Eric Stern  
Chief Executive Officer and  
Board Secretary



# PROXY VOTING POLICY

RED LINE VERSION WITH PROPOSED AMENDMENTS

## PURPOSE

The purpose of this policy is to establish standards and procedures ~~a framework~~ for resolving ~~correcting~~ errors associated in connection with the payment of member benefits and the collection of member contributions in a manner consistent with the Internal Revenue Service Employee Plans Compliance Resolution System currently contained in Revenue Procedure 2021-30 ("EPCRS"), including any future changes to EPCRS, and relevant state and federal law. ~~In particular, this policy sets out SCERS' authority and procedures for making prospective corrections (i.e., adjusting benefits and contributions on a going forward basis) and retroactive corrections (i.e., recouping past over payments and refunding past over collections). In addition, this policy protects SCERS' tax-qualified status by setting out an error correction protocol consistent with the Internal Revenue Service Employer Plans Compliance Resolution System.~~

## POLICY

Members and beneficiaries have a right to accurate pension benefit calculations and payments. No member or beneficiary has a right to be deprived from receiving or retaining retirement benefits to which they are entitled, nor do they have a right to receive or retain retirement benefits to which they are not entitled. Upon discovery, SCERS shall make all reasonable efforts as soon as practicable to remit or recover all errors in the payment of member benefits or contributions, in a manner consistent with state and federal law and its own policies and procedures.

~~This policy pertains to three categories of errors caused by the acts and omissions of SCERS and/or SCERS members: (1) overpayment of member benefits; (2) the over-collection or under-collection of member contributions; and (3) the underpayment of member benefits. For the avoidance of doubt, this policy, and the procedures therein, does~~ not apply to errors, under-collections, over-collections, and other correctible events driven by employer operations, (e.g., usual and customary employer reporting adjustments for member contributions, nor does it alter corrections undertaken pursuant to Retirement Board Orders passed and adopted on September 16, 2020 and February 15, 2023 in response to Alameda County Deputy Sheriff's Assoc.), et al. v. Alameda County Employees' Retirement Assoc., et al., 9 Cal.5th 1020 (2020)).

All references to "interest" in this policy below refers to the semiannual interest crediting rate for Member Reserves for the period(s) to be corrected.

## STANDARDS AND PROCEDURES

1. **Investigation.** SCERS shall thoroughly investigate any errors or omissions upon discovery and promptly undertake appropriate corrective measures to resolve them.
2. **Correction Factors.** The CEO shall have full authority to take the necessary or appropriate corrective measures to resolve errors or omissions, in consideration of the following non-exclusive factors:
  - a. State and federal law, including but not limited to, the County Employees Retirement Law of 1937 and Internal Revenue Service guidelines and procedures;
  - b. Fiduciary obligations and prudent administration of fund assets;
  - c. The total amount of the overpayment or underpayment, including interest;
  - d. The verifiable financial circumstances of the affected member or beneficiary;
  - e. The anticipated costs of collection and likelihood of success, e.g., administrative and legal concerns;
  - f. Input from the Plan sponsor/employer; and
  - g. Any intent to defraud, or other culpability or responsibility for the error, attributable to SCERS, the member or beneficiary, the Plan sponsor/employer, or a third party.
3. **Resolutions.** Corrections should endeavor to place SCERS and the member or beneficiary in the position they would have been had the error or omission not occurred and, where feasible, that resolution should result in immediate full payment of the amount at issue, including interest.

~~\_\_\_\_\_ a. **A. Correcting the Overpayment of Member Benefits**~~

~~\_\_\_\_\_ On occasion, SCERS may discover that it has paid a retirement allowance or other benefit to a member or beneficiary (collectively, "member") in excess of what is owed under the law. When that occurs, SCERS shall take steps to make prospective and retroactive corrections as soon as practicable in accordance with this policy. Consistent with SCERS' status as a tax-qualified retirement plan, SCERS will make error corrections using any methods consistent with the IRS' Employee Plans Compliance Resolution System under Revenue Procedure 2019-19 or any subsequent guidance promulgated by the Secretary of the Treasury for correcting qualification errors.~~

~~1. Prospective Corrections (Adjusting Benefits Going Forward)~~

- ~~a. With respect to prospective corrections, SCERS shall adjust the amount of the member or beneficiary's benefit to ensure that, going forward, the member or beneficiary receives a benefit that does not exceed what is owed under the law.~~
- ~~b. In his or her discretion, the CEO may negotiate a repayment schedule (not to exceed the expected lifetime of the member and recoverable from the beneficiary upon the member's death to the extent consistent with IRS guidance) and may accept less than the full amount at issue on SCERS' behalf ("agreement of compromise"). An agreement of compromise to accept less than the full amount shall follow the dollar limits under the SCERS' CEO Delegated Authority for Expenses Policy.~~
- ~~c. Unless ordered to do so by the IRS and/or a final, non-appealable order of a court of competent jurisdiction, the CEO shall also have discretion to forgo collection of any amount pursuant to the factors in Section 2 where there are correction exemptions under state or federal regulations or where there is an error attributable to SCERS that might subject SCERS to valid equitable defenses or potential fiduciary claims by a member or beneficiary.~~
- ~~d. Where there has been a system-wide error affecting a significant number of members, SCERS may encounter practical limitations on its ability to gather the facts necessary to recreate ~~the~~ members' final compensation and achieve perfect prospective corrections.- If, in the judgment of the Board, the cost of such fact-gathering and prospective correction exceeds what is administratively prudent under the circumstances, the Board may authorize alternative corrective actions so long as they reasonably protect members' rights and are consistent with the prudent administration of fund assets and IRS correction principles.~~
- ~~e. In cases where an active or deferred member has overpaid member contributions, SCERS will refund the amount at issue, plus interest. In cases where a retired member has overpaid member contributions, SCERS will refund the amount at issue, plus interest, with an offset necessary to recover overpaid benefits, if any, to the extent allowable under IRS guidance. Notwithstanding the foregoing, in cases of overpayment or underpayment of member contributions to SCERS where the amount at issue is less than \$250, SCERS reserves the right not to issue a refund or pursue recovery as a matter of prudent Plan administration.~~
- ~~f. In cases of overpayment or underpayment of retired member or beneficiary benefits where the amount at issue is less than \$250 in estimated total lifetime benefits, as determined by the system's actuary, SCERS reserves the right not to pursue a corrective action as a matter of prudent Plan administration.~~

g. Any collection shortfall arising from the administration of this policy will be reconciled through the Actuarial Accrued Liability as part of the annual actuarial valuation process to the extent it is consistent with EPCRS guidance.

4. **Collection Methods.** The CEO shall consult with SCERS' General Counsel as needed with respect to the administration of this policy. SCERS may utilize any collection methods and pursue all legal remedies that, in its judgment, may facilitate a full recovery.

a. Collection methods shall be appropriate under state and federal law and may include communications to financial institutions for the recovery of allowance payments deposited after the death of a member or beneficiary.

b. SCERS may offset the amount of overpayment to be recovered against future benefit payments. SCERS may also seek recovery by adjusting the allowance so that the retired member (or the retired member and his/her beneficiary to the extent permitted under IRS guidance) will receive the actuarial equivalent of the allowance to which the member is entitled. SCERS may also institute an action against the member for declaratory, legal, and equitable relief.

c. When the CEO, in consultation with General Counsel, elects to forego collection of any overpayment to a member or beneficiary, or otherwise determines that an overpayment is uncollectable following investigation and exhaustion of reasonable efforts, the CEO shall notify SCERS' Chief Operations Officer ("COO") in writing. The COO shall track all uncollectable overpayments until Board approval to discharge is received pursuant to Section 7, below.

5. **Notice of Correction.** SCERS shall notify members and beneficiaries of any errors or omissions affecting their contributions or benefits by way of a Notice of Correction ("Notice") to the member containing information about the nature of the error and a proposed plan for the corrections. The Notice shall be sent by SCERS' Chief Benefits Officer ("CBO") via First Class Mail to the member or beneficiary's address of record on file with SCERS and via any other method (e.g., electronic mail) that SCERS reasonably believes will provide adequate notice.

The Notice shall inform the recipient that, if they have objections to any aspect of the Notice, they may appeal the CBO's proposed correction plan in accordance with SCERS' Administrative Appeals Policy ("Appeals Policy"). As part of the appeal process, the CBO, CEO and/or the Board may consider a mutually agreeable resolution with the member or beneficiary pursuant to Section 3, above. In the absence of such a resolution, at the conclusion of the appeal period, the CBO will issue a written Administrative Decision, from which the recipient may seek further review in accordance with the Appeals Policy.

6. **Timeliness.** Although SCERS will strive to commence corrective recovery actions in a timely manner, no limitations period applies to the administrative actions described in the paragraphs above.

7. **Reporting.** The CEO shall annually report to the Board the amount of overpaid benefits and underpaid contributions in collection status. At the same Board meeting, for the same time period, the COO shall present a request to the Board to authorize the discharge of accounts that have been deemed uncollectable pursuant to Section 4(c), above. Benefit overpayments deemed uncollectable should be discharged from SCERS' financial accounting records as "receivables" in accordance with generally accepted accounting principles. In presenting these items to the Board, to protect the privacy rights of members, the report shall contain aggregate information only.

## **2. Retroactive Corrections (Recovery of Overpaid Benefits)**

~~With respect to retroactive corrections, SCERS shall take all reasonable steps to recover and collect overpaid benefits, plus interest, from members in accordance with the following criteria:~~

- ~~a. Where the overpayment of a benefit was due to fraudulent reports made or caused to be made by the member, or the member caused his or her final compensation to be improperly increased or overstated at the time of retirement, SCERS shall seek recovery of such overpayments from the member. See Gov. Code § 31539. SCERS may use any and all collection methods and legal remedies that, in its judgment, would facilitate a full recovery. SCERS may seek to recover overpayments from the member in a lump sum or by installment plan (which may, but need not be, over the same period of time that the error occurred). SCERS may also offset the amount of overpayment to be recovered against future benefit payments. SCERS may also seek recovery by adjusting the allowance so that the retired member or the retired member and his/her beneficiary will receive the actuarial equivalent of the allowance to which the member is entitled. SCERS may also institute an action against the member for declaratory, legal, and equitable relief.~~
- ~~b. Where the overpayment of a benefit was due to an act or omission by SCERS, the member, or beneficiary, and the circumstances would not subject SCERS to valid equitable defenses and potential fiduciary claims by the member or beneficiary, SCERS shall seek recovery of such overpayments from the member. SCERS may use any and all collection methods and legal remedies that, in its judgment, will most likely to facilitate a full recovery, including those identified in the preceding paragraph.~~
- ~~c. Where the overpayment of a benefit was due to inadvertent error by SCERS (including an inadvertent error in statutory or legal interpretation), and such error would (in the judgment of the Board and/or the Chief Executive Officer with consultation with legal counsel) subject SCERS to valid equitable defenses and potential fiduciary claims by the member, SCERS need not seek to recover such overpayments from the member unless ordered to do so by the IRS and/or a final,~~



~~non-appealable order of a court of competent jurisdiction. *City of Oakland v. Oakland Police and Fire Retirement System*, 224 Cal.App.4th 210 (2014); *Blaser v. State Teachers' Retirement System*, 37 Cal.App.5th 349 (2019).~~

~~SCERS shall take actions to recover overpayments in accordance with the notice and hearing procedures set out in Section D below. Although SCERS should strive to commence corrective recovery actions in a timely manner, no limitations period applies to the administrative actions described in the paragraphs above. See *Krolikowski v. San Diego City Employees' Retirement System*, 24 Cal. App. 5th 537 (2018).~~

~~To the extent SCERS is unable to collect any overpayments from members—including under the circumstances in Section A.2.c. above—those overpayments will be reconciled through the Actuarial Accrued Liability as part of the annual actuarial valuation process.~~

### **~~3. Agreements of Compromise in the Collection of Overpaid Benefits~~**

~~Although SCERS will generally strive to collect 100 percent of overpaid benefits, plus interest, from the overpaid member, SCERS may on occasion encounter legal and practical limitations on its ability to do so. In those situations, SCERS may enter into an agreement whereby the member repays less, or is likely to repay less, than 100 percent of overpaid benefits and interest ("agreements of compromise"). In determining whether to enter into an agreement of compromise, and in determining the extent of compromise, SCERS shall consider the following:~~

- ~~— The total amount of overpaid benefits received by the member;~~
- ~~— The total amount of overpaid benefits that the member would be relieved from returning;~~
- ~~— The cause of the overpayment;~~
- ~~— Whether, in litigation, the member would have equitable or legal defenses against repaying 100 percent of the overpaid benefits;~~
- ~~— Whether litigation to recover 100 percent of the overpaid benefits would be wholly or partially subject to a statute of limitations or other time bar (e.g., Code Civ. Proc. § 338; Gov. Code § 31539);~~
- ~~— The cost of pursuing administrative or litigation action against the member weighed against the amount of overpayment to collected;~~
- ~~— Whether the member is insolvent or otherwise judgment-proof; and/or~~
- ~~— Any other reasonable factors stemming from SCERS' fiduciary obligations, obligations as a tax-qualified plan, and other public policy considerations.~~

~~An agreement of compromise involving overpaid benefits of \$50,000 or more requires the approval of the Board. An agreement of compromise involving overpaid benefits of less than \$50,000 requires approval of the Chief Executive Officer. Any collection shortfall arising from SCERS entering into an agreement of compromise will be reconciled through the Actuarial Accrued Liability as part of the annual actuarial valuation process.~~

### **~~B. Correcting Over-Collection or Under-Collection of Member Contributions~~**

~~When SCERS has over-collected or under-collected member contributions, SCERS shall take steps to make prospective and retroactive corrections as soon as practicable in accordance with this policy.~~

~~In the event an active or deferred member overpaid member contributions, SCERS will refund the full overpayment amount, plus interest, to such member. In the event contributions were overpaid by a member who has since retired, the full amount of overpaid contributions will be refunded to the member, plus interest, with any offset necessary to recover overpaid benefits, if any.~~

~~In the event of 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 law. 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. SCERS may recoup the contribution underpayment from the retired member by deducting from benefits.~~

~~SCERS shall take actions to collect underpaid contributions and refund overpaid contributions in accordance with the notice and hearing procedures set out in Section D below. Although SCERS will strive to commence corrective recovery actions in a timely manner, no limitations period applies to the administrative actions described in the paragraphs above.~~

~~To the extent SCERS is unable to recoup any underpaid contributions from members as described above, the shortfall will be reconciled through the Actuarial Accrued Liability as part of the annual actuarial valuation process.~~

### **~~C. — Correcting the Underpayment of Member Benefits~~**

~~When SCERS has underpaid a retirement allowance or other benefit to a member, SCERS shall take steps to make prospective and retroactive corrections as soon as practicable in accordance with this policy.~~

~~With respect to prospective corrections, SCERS shall adjust the amount of the member's benefit to ensure that, going forward, the member receives a benefit in the amount owed under the law.~~

~~With respect to retroactive corrections, SCERS shall pay the member an amount equal to (1) the member's underpayment prior to the date of the prospective correction described in the preceding sentence, and (2) interest.~~

### **~~D. — Error Correction Procedures~~**

#### **~~1. Notice of Correction and Administrative Appeal~~**

~~SCERS shall notify members of errors, and provide an opportunity for administrative appeal, in accordance with following procedure:~~

- ~~a. Upon the discovery of an error concerning the payment of benefits or collection of contributions, SCERS Staff shall conduct an investigation to determine the cause of the error. As soon as practicable, Staff shall form a plan to correct the error prospectively and retroactively in accordance with Sections A.1., A.2., B, and C above. (Staff shall consult with General Counsel, the Chief Benefits Officer, and/or the Chief Executive Officer as appropriate to determine whether Section A.2.c. applies.) Staff may, in its discretion, decide not to pursue recovery when overpaid benefits are \$100 or less.~~
- ~~b. Staff shall send a Notice of Correction (Notice) to the member containing information about the nature of the error and a proposed plan for prospective and retroactive corrections. Further requirements for the Notice are set forth in Section D.3 below. The Notice shall be sent via Certified Mail or other method that allows Staff to verify its receipt by the member.~~
- ~~c. If the member does not object to the Notice of Correction in writing by the date identified in the letter (at least 30 days), the member will be deemed to have agreed and consented to all aspects of the Notice, including the proposed repayment plan. The repayment plan is thereafter deemed final, and SCERS will proceed to implement it. (The preceding is subject to any limiting requirements of the IRS or final, non-appealable, order of a court of competent jurisdiction.)~~
- ~~d. If the member does not agree with the proposed correction plan in the Notice, or any other aspect of the Notice (e.g., whether SCERS correctly calculated the error), the member must object to the Notice in writing within the approximately 30 day period. In addition, the member may confer with the Chief Benefits Office (CBO) or designee and attempt to negotiate an agreement with alternative terms. Although the CBO or designee may agree to alternative repayment schedules, the CBO or designee is not authorized to enter into any agreements of compromise concerning prospective or retroactive corrections.~~
- ~~e. If no agreement is reached between the member and Staff, the CBO will make an administrative decision regarding the scope of the error and the plan of correction.~~
- ~~f. The member may appeal the CBO's decision in accordance with the "Appeal of SCERS' Administrative Decisions Policy." As a part of that appeal process, the Chief Executive Officer and/or the Board may consider an agreement of compromise in accordance with Section A.3. above.~~
- ~~g. At the conclusion of the administrative appeal process, there should be a final administrative decision about the scope of the error and a plan of correction for SCERS to implement. (For example, if the member was unsuccessful in appealing the CBO's decision, then that will be the final administrative decision.) SCERS shall then take all reasonable steps to implement, administer, and enforce the final administrative decision. The Board may meet in closed session to consider whether to initiate any litigation so that SCERS may obtain and execute on a civil judgment (garnishing wages and attaching property).~~

## **~~2. Modified Procedures for Overpaid Persons Not Receiving Ongoing Benefits~~**

Where SCERS has overpaid an individual that is not receiving ongoing benefits, a modified procedure applies.

~~After Staff sends a Notice of Correction pursuant to Section D.1.a. and D.1.b. above, Staff shall reach out to the individual and attempt to obtain his or her affirmative agreement to the proposed repayment plan. The CBO (or designee) and the individual may also negotiate for some alternative repayment plan. If the agreement involves a compromise in the amount owed, the agreement must be reviewed and approved by the Chief Executive Officer and/or the Board (depending on whether the total overpayment exceeds \$50,000). Any such agreement must be in writing and fully executed by both parties.~~

~~If the parties come to terms on a plan for repayment, SCERS shall implement the agreed-upon plan. If the individual subsequently breaches the agreement, SCERS may, at its discretion, use any available legal remedy to enforce the agreement, including by obtaining a civil judgment against the individual and executing on the judgment (garnishing wages and attaching property).~~

~~If the parties cannot come to terms on a plan for repayment, then Section D.1.e. to D.1.g. will resume. At the end of the administrative appeal process, SCERS may take all reasonable steps to implement, administer, and enforce the final administrative decision, including by obtaining and executing on a civil judgment.~~

### ~~3. Contents of Notice of Correction~~

~~The Notice of Correction shall inform members that, if they have objections to any aspect of the Notice, they must contact Staff and/or the Chief Benefits Officer by a certain date. Generally, that date should be no less than 30 days after the member's receipt of the Notice. The Notice shall also inform members that they may submit an administrative appeal in accordance with the "Appeal of SCERS' Administrative Decisions Policy" to dispute the proposed correction plan or any aspect of the Notice.~~

~~In the event of an overpayment of a benefit to the member that is not subject to a fiduciary defense determination (Section A.2.a. and A.2.b.), the Notice shall inform the member of the amount of the prospective correction, the total amount previously overpaid to the member, and the amount of any interest charged. In addition, the Notice shall inform the member that the correction shall be made with the next available benefit payment after the Notice has been sent. The Notice shall identify the expected duration of the repayment to recover the overpaid amount plus interest. Finally, the Notice shall note that the proposed corrective plan 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 defense (Section A.2.c.), the Notice of Correction shall specify the amount of the prospective correction, and that SCERS has decided for fiduciary and equitable reasons not to recover past overpayments from the member, but instead to include it in the Actuarial Accrued Liability, 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 any under-payment of contributions by the member, the Notice of Correction 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.~~

#### **~~4. Reports to the Board~~**

~~The Chief Executive Officer shall annually report to the Board the amount of overpaid benefits and underpaid contributions in collection status. To protect the privacy rights of members, the report shall contain aggregate information only.~~

~~The first report shall be provided to the Board in January 2022 to reflect the prior calendar year activity, and every January thereafter.~~

#### **AUTHORITY**

Internal Revenue Service Revenue Procedure 2021-30  
California Government Code Sections 31538-31541.1  
Krolikowski v. SDCERS, 24 Cal.App.5<sup>th</sup> 537 (2109)

#### **RESPONSIBILITIES**

——Executive Owner: General Counsel

#### **POLICY HISTORY**

Date	Description
<del>95-165-</del> 202024	<del>Staff to recommend</del> Board <del>amended</del> approve Ppolicy.
9-16-2020	Board approved Ppolicy.



# ERROR CORRECTION POLICY

CLEAN VERSION AS AMENDED

## PURPOSE

The purpose of this policy is to establish standards and procedures for resolving errors associated with the payment of member benefits and the collection of member contributions in a manner consistent with the Internal Revenue Service Employee Plans Compliance Resolution System currently contained in Revenue Procedure 2021-30 ("EPCRS"), including any future changes to EPCRS, and relevant state and federal law.

## POLICY

Members and beneficiaries have a right to accurate pension benefit calculations and payments. No member or beneficiary has a right to be deprived from receiving or retaining retirement benefits to which they are entitled, nor do they have a right to receive or retain retirement benefits to which they are not entitled. Upon discovery, SCERS shall make all reasonable efforts as soon as practicable to remit or recover all errors in the payment of member benefits or contributions, in a manner consistent with state and federal law and its own policies and procedures.

This policy does not apply to errors, under-collections, over-collections, and other correctible events driven by employer operations, e.g., usual and customary employer reporting adjustments for member contributions, nor does it alter corrections undertaken pursuant to Retirement Board Orders passed and adopted on September 16, 2020 and February 15, 2023 in response to Alameda County Deputy Sheriff's Assoc.), *et al.* v. Alameda County Employees' Retirement Assoc., *et al.*, 9 Cal.5th 1020 (2020).

All references to "interest" in this policy refer to the semiannual interest crediting rate for Member Reserves for the period(s) to be corrected.

## STANDARDS AND PROCEDURES

1. **Investigation.** SCERS shall thoroughly investigate any errors or omissions upon discovery and promptly undertake appropriate corrective measures to resolve them.
2. **Correction Factors.** The CEO shall have full authority to take the necessary or appropriate corrective measures to resolve errors or omissions, in consideration of the following non-exclusive factors:

- a. State and federal law, including but not limited to, the County Employees Retirement Law of 1937 and Internal Revenue Service guidelines and procedures;
  - b. Fiduciary obligations and prudent administration of fund assets;
  - c. The total amount of the overpayment or underpayment, including interest;
  - d. The verifiable financial circumstances of the affected member or beneficiary;
  - e. The anticipated costs of collection and likelihood of success, e.g., administrative and legal concerns;
  - f. Input from the Plan sponsor/employer; and
  - g. Any intent to defraud, or other culpability or responsibility for the error, attributable to SCERS, the member or beneficiary, the Plan sponsor/employer, or a third party.
3. **Resolutions.** Corrections should endeavor to place SCERS and the member or beneficiary in the position they would have been had the error or omission not occurred and, where feasible, that resolution should result in immediate full payment of the amount at issue, including interest.
- a. With respect to prospective corrections, SCERS shall adjust the amount of the member or beneficiary's benefit to ensure that, going forward, the member or beneficiary receives a benefit that does not exceed what is owed under the law.
  - b. In his or her discretion, the CEO may negotiate a repayment schedule (not to exceed the expected lifetime of the member and recoverable from the beneficiary upon the member's death to the extent consistent with IRS guidance) and may accept less than the full amount at issue on SCERS' behalf ("agreement of compromise"). An agreement of compromise to accept less than the full amount shall follow the dollar limits under the SCERS' CEO Delegated Authority for Expenses Policy.
  - c. Unless ordered to do so by the IRS and/or a final, non-appealable order of a court of competent jurisdiction, the CEO shall also have discretion to forgo collection of any amount pursuant to the factors in Section 2 where there are correction exemptions under state or federal regulations or where there is an error attributable to SCERS that might subject SCERS to valid equitable defenses or potential fiduciary claims by a member or beneficiary.
  - d. Where there has been a system-wide error affecting a significant number of members, SCERS may encounter practical limitations on its

ability to gather the facts necessary to recreate members' final compensation and achieve perfect prospective corrections. If, in the judgment of the Board, the cost of such fact-gathering and prospective correction exceeds what is administratively prudent under the circumstances, the Board may authorize alternative corrective actions so long as they reasonably protect members' rights and are consistent with the prudent administration of fund assets and IRS correction principles.

- e. In cases where an active or deferred member has overpaid member contributions, SCERS will refund the amount at issue, plus interest. In cases where a retired member has overpaid member contributions, SCERS will refund the amount at issue, plus interest, with an offset necessary to recover overpaid benefits, if any, to the extent allowable under IRS guidance. Notwithstanding the foregoing, in cases of overpayment or underpayment of member contributions to SCERS where the amount at issue is less than \$250, SCERS reserves the right not to issue a refund or pursue recovery as a matter of prudent Plan administration.
  - f. In cases of overpayment or underpayment of retired member or beneficiary benefits where the amount at issue is less than \$250 in estimated total lifetime benefits, as determined by the system's actuary, SCERS reserves the right not to pursue a corrective action as a matter of prudent Plan administration.
  - g. Any collection shortfall arising from the administration of this policy will be reconciled through the Actuarial Accrued Liability as part of the annual actuarial valuation process to the extent it is consistent with EPCRS guidance.
4. **Collection Methods.** The CEO shall consult with SCERS' General Counsel as needed with respect to the administration of this policy. SCERS may utilize any collection methods and pursue all legal remedies that, in its judgment, may facilitate a full recovery.
- a. Collection methods shall be appropriate under state and federal law and may include communications to financial institutions for the recovery of allowance payments deposited after the death of a member or beneficiary.
  - b. SCERS may offset the amount of overpayment to be recovered against future benefit payments. SCERS may also seek recovery by adjusting the allowance so that the retired member (or the retired member and his/her beneficiary to the extent permitted under IRS guidance) will receive the actuarial equivalent of the allowance to which the member is entitled. SCERS may also institute an action against the member for declaratory, legal, and equitable relief.



- c. When the CEO, in consultation with General Counsel, elects to forego collection of any overpayment to a member or beneficiary, or otherwise determines that an overpayment is uncollectable following investigation and exhaustion of reasonable efforts, the CEO shall notify SCERS' Chief Operations Officer ("COO") in writing. The COO shall track all uncollectable overpayments until Board approval to discharge is received pursuant to Section 7, below.
5. **Notice of Correction.** SCERS shall notify members and beneficiaries of any errors or omissions affecting their contributions or benefits by way of a Notice of Correction ("Notice") to the member containing information about the nature of the error and a proposed plan for the corrections. The Notice shall be sent by SCERS' Chief Benefits Officer ("CBO") via First Class Mail to the member or beneficiary's address of record on file with SCERS and via any other method (e.g., electronic mail) that SCERS reasonably believes will provide adequate notice.

The Notice shall inform the recipient that, if they have objections to any aspect of the Notice, they may appeal the CBO's proposed correction plan in accordance with SCERS' Administrative Appeals Policy ("Appeals Policy"). As part of the appeal process, the CBO, CEO and/or the Board may consider a mutually agreeable resolution with the member or beneficiary pursuant to Section 3, above. In the absence of such a resolution, at the conclusion of the appeal period, the CBO will issue a written Administrative Decision, from which the recipient may seek further review in accordance with the Appeals Policy.
6. **Timeliness.** Although SCERS will strive to commence corrective recovery actions in a timely manner, no limitations period applies to the administrative actions described in the paragraphs above.
7. **Reporting.** The CEO shall annually report to the Board the amount of overpaid benefits and underpaid contributions in collection status. At the same Board meeting, for the same time period, the COO shall present a request to the Board to authorize the discharge of accounts that have been deemed uncollectable pursuant to Section 4(c), above. Benefit overpayments deemed uncollectable should be discharged from SCERS' financial accounting records as "receivables" in accordance with generally accepted accounting principles. In presenting these items to the Board, to protect the privacy rights of members, the report shall contain aggregate information only.

## **AUTHORITY**

Internal Revenue Service Revenue Procedure 2021-30  
California Government Code Sections 31538-31541.1  
*Krolikowski v. SDCERS*, 24 Cal.App.5th 537 (2109)

## **RESPONSIBILITIES**

Executive Owner: General Counsel

## POLICY HISTORY

Date	Description
5-15-2024	Board amended policy.
9-16-2020	Board approved policy.