

OVERPAYMENT AND UNDERPAYMENT OF MEMBER CONTRIBUTIONS POLICY

The Board of Retirement ("Board") has fiduciary and compliance obligations to the retirement fund and its Members to conserve and protect fund assets for the benefit of the Kern County Employees' Retirement Association's ("KCERA's") Members and beneficiaries.

POLICY STATEMENT

To preserve KCERA's financial integrity and comply with its fiduciary responsibilities and IRS (Internal Revenue Service) provisions governing the correction of contribution overpayments and underpayments, it is KCERA's policy to review any overpayment or underpayment promptly and diligently and to make such reasonable, diligent, and systematic efforts as are appropriate under the circumstances to recover from a Member the amount of any underpayment of contributions and to remit to a Member the amount of any overpayment of contributions, consistent with this Policy, and procedures established by the Board and in compliance with Revenue Procedure ("Rev. Proc.") 2018-52.

PURPOSE

The KCERA defined benefit plan ("the Plan") establishes the required Member¹ contributions in accordance with applicable law, including the CERL (County Employees Retirement Law of 1937), dependent on membership tier and, as appropriate, in consultation with its actuary. Unfortunately, errors sometimes occur in the amount of contributions which a member owes to the Plan. However, the Board is committed to providing Members with accurate and reliable contribution information and treatment. The purpose of this policy is to provide guidelines and a process for evaluation and collection or repayment of contributions owed to a Member or the Plan.

This Policy is designed for use when errors affect an individual Member's contributions. In the event of a system-wide error that affects multiple Members' contributions, the Board may implement a system-wide correction process it determines is appropriate after consideration of all of the facts and circumstances related to the error.

¹ For purposes of this Policy, "Member" shall mean a member or beneficiary.

GUIDELINES

Underpayment(s) Any amount delivered to the Plan by the Member through payroll contribution deductions that is less than that which the Plan was entitled.

Overpayment(s) Mistaken or excess employee contributions made to the Plan through the Member's payroll contribution deductions.

Contributions For purposes of this Policy, Member contributions include amounts paid for purchases of service credit.

Resolved With regard to Overpayments, the issue is "Resolved" when the Plan has remitted the amount of the Overpayment(s).

With regard to Underpayments, the issue is "Resolved" when the Plan has received full payment of the amount of the Underpayment(s), including interest, if applicable. For purposes of this Policy, "full payment" may include an installment repayment plan for the full amount owed, including applicable interest.

Appropriate Interest Consistent with Revenue Procedure 2018-52, interest on an Overpayment to a Member shall be due to the Plan, or to the Member in the case of an Underpayment, as set forth in this Policy.

PROCEDURES

A. General Procedures

1. Investigation

- a. When an Underpayment or Overpayment has been identified, the Executive Director will initiate an investigation into the facts and circumstances surrounding the Overpayment or Underpayment to resolve the matter consistent with this Policy.
- b. When an Underpayment or Overpayment is discovered in the contribution payment(s) to one Member, KCERA staff shall carry out all reasonable analysis to determine whether such error may also affect any other Member(s) and shall take action as set forth in this Policy.

2. Notification

- a. KCERA's Executive Director shall report any Underpayment or Overpayment that exceeds \$5,000 in principal to the Board at the next regularly scheduled Board meeting.
- b. KCERA's Executive Director shall provide the Board with a semi-annual, written report of any Underpayment or Overpayment in excess of the principal amount of \$1,000 that was resolved over the preceding six-month period, with a description of the actions taken to correct the Underpayment or Overpayment.

B. Underpayment of Contributions by Members

1. Resolution

- a. Whenever an Underpayment of contributions is discovered, KCERA shall, after appropriate written notice to the Member, make a prospective adjustment to the Member's contribution rate (if necessary) in order to get the Member on the correct contribution rate and shall take all reasonable steps to recover the full amount of all past Underpayments, with interest, subject to the provisions of this Policy and applicable law.
- b. KCERA will recover Underpayments either by (a) lump sum payment from the Member which is made on a post-tax basis or (b) additional amounts added to the Member's future contributions, over a period of time as determined by KCERA, unless KCERA, in its discretion and because of legal or practical considerations, determines that another process is warranted. Under option (b), the additional amounts will be paid to KCERA on a pre-tax basis.
- c. Collection of Underpayments shall only be pursued in cases in which the cumulative total amount underpaid exceeds \$10 (excluding interest).

2. Underpayment of Contributions Exceeding \$5,000

- a. Underpayment for which the principal exceeds \$5,000 should result in a full payment of the entire amount, plus interest, as applicable. For purposes of this Policy, full payment may include an installment payment for the full amount owed as described above, including applicable interest. A resolution on these terms does not require Board approval.
- b. Any resolution of an Underpayment exceeding \$5,000, that does not result in full payment of the entire amount, plus interest (as applicable under this Policy), must be approved by the Board.

3. Underpayment of Contributions \$5,000 or less

- a. Underpayment for which the principal is \$5,000 or less should result in a full payment of the entire amount, plus applicable interest. For purposes of this Policy, full payment may include an installment payment for the full amount owed described in this Policy, including applicable interest. A resolution on these terms does not require Board approval.
- b. The Executive Director shall have authority to resolve Underpayments in accordance with this Policy when the total principal amount of Underpayment (excluding the interest) to KCERA does not exceed \$5,000.

4. Interest

- a. Interest shall be calculated using KCERA's credited interest rate during the period of the Underpayment, applied to the outstanding amount due until such amount is fully repaid.
- b. KCERA shall charge the Member interest only if the Underpayment of benefits is not paid in full within the same calendar year in which the Underpayment was made.

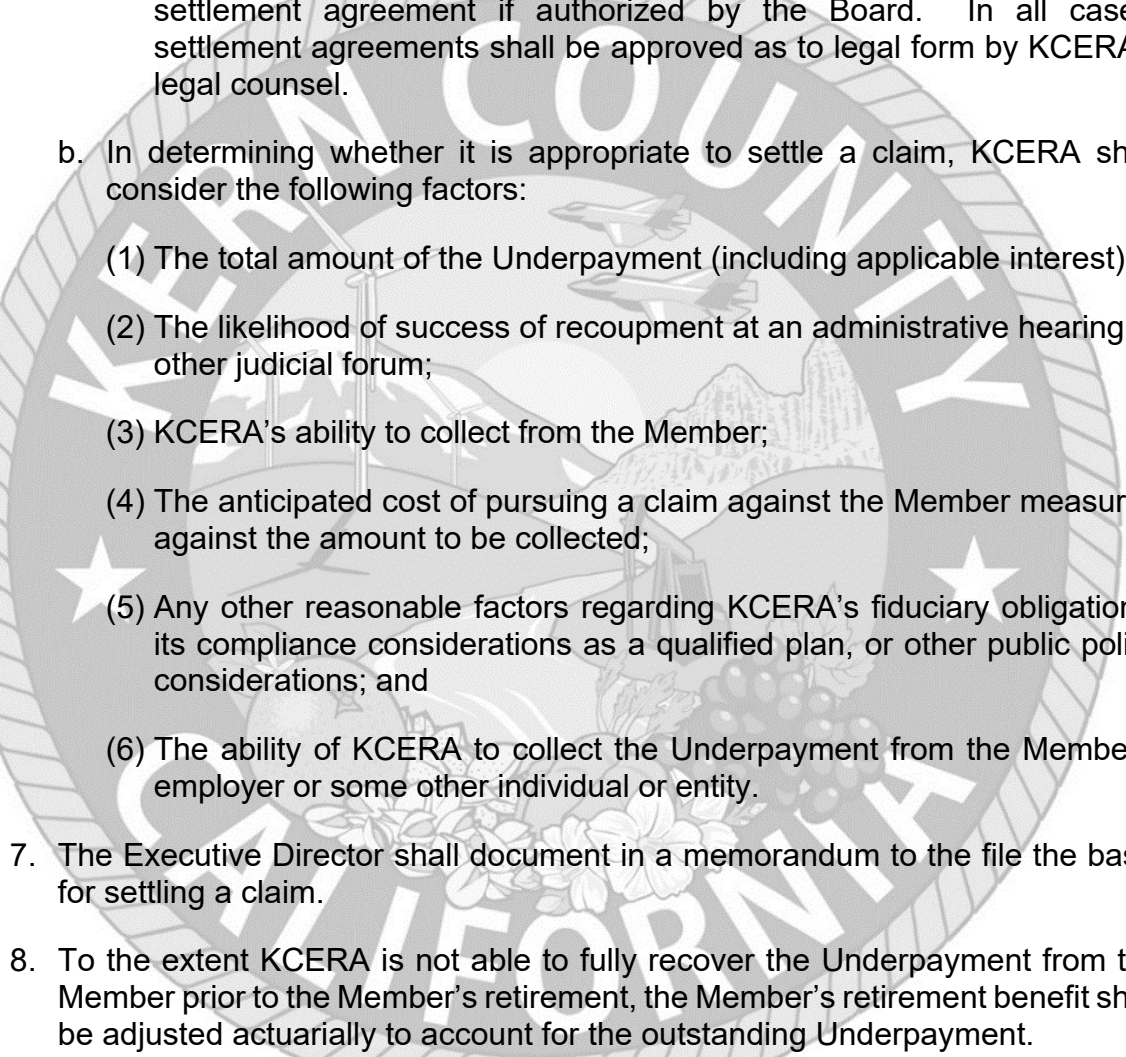
5. Due Process

- a. Prospective Corrections - KCERA will prospectively correct contribution Underpayment(s) to reflect the correct amount to which Plan is entitled after providing written notification to the Member.
- b. Past Underpayment(s) - KCERA shall not add additional amounts owed to the Plan until the Member has 1) signed an Agreement to repay the Underpayment or 2) has been provided at least 30 days' notice of KCERA's intent to recoup the Underpayment(s) and been given an opportunity to participate in the administrative appeals process provided by KCERA, whichever occurs first.

6. Procedures and Considerations for Evaluating Collection of Underpayment of Contributions in Certain Cases

- a. In situations where, upon review of the totality of the circumstances, KCERA determines that full payment of past underpaid contributions is unreasonable, KCERA may settle (i.e., accept less than full repayment, including applicable interest) a claim for Underpayments of contributions, pursuant to the following guidelines:

- (1) All settlements must be reasonably prudent under the circumstances of the particular case.

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- The seal of Kern County, California, is a large, circular emblem in the background. It features a central shield with a landscape scene including a sun, mountains, and a river. The shield is surrounded by a wreath. The words "KERN COUNTY" are arched across the top, and "CALIFORNIA" is arched across the bottom. Two stars are positioned on either side of the shield.
- (2) The period for repayment under the settlement may be negotiated between KCERA and the affected Member, but such period shall not exceed twice the length of time over which the Underpayment of contributions occurred or five years, whichever is shorter.
- (3) Settlement agreements may be signed by the Executive Director, or designee, in all cases except where the principal amount of the Underpayment(s) exceeds \$5,000. In cases where the principal amount exceeds \$5,000, the Executive Director, or designee, shall only sign a settlement agreement if authorized by the Board. In all cases, settlement agreements shall be approved as to legal form by KCERA's legal counsel.
- b. In determining whether it is appropriate to settle a claim, KCERA shall consider the following factors:
- (1) The total amount of the Underpayment (including applicable interest);
 - (2) The likelihood of success of recoupment at an administrative hearing or other judicial forum;
 - (3) KCERA's ability to collect from the Member;
 - (4) The anticipated cost of pursuing a claim against the Member measured against the amount to be collected;
 - (5) Any other reasonable factors regarding KCERA's fiduciary obligations, its compliance considerations as a qualified plan, or other public policy considerations; and
 - (6) The ability of KCERA to collect the Underpayment from the Member's employer or some other individual or entity.
7. The Executive Director shall document in a memorandum to the file the basis for settling a claim.
8. To the extent KCERA is not able to fully recover the Underpayment from the Member prior to the Member's retirement, the Member's retirement benefit shall be adjusted actuarially to account for the outstanding Underpayment.
9. KCERA may pursue all legal remedies to collect Underpayments, including making a claim on an estate or trust, if appropriate.

C. Overpayment of Contributions by Members

1. Resolution

When a Member has overpaid contributions, the Member shall be notified of the Overpayment and that he/she is entitled to a prospective adjustment to his or her contribution rate, if appropriate, as well as a lump sum payment for all past Overpayments, with appropriate interest

2. Interest

a. Interest shall accrue on each Overpayment from the date of the Overpayment to the date of the lump sum corrective payment.

b. Interest shall be calculated using KCERA's credited interest rate during the period of the Overpayment.

(1) KCERA shall pay the Member interest only if the Overpayment of contributions is not corrected within the same calendar year in which the Overpayment was made.

3. Corrective Payment

a. If the Overpayment is discovered in the same calendar year in which the Overpayment was made to the Plan, and if correction also is able to be made in the same calendar year, KCERA shall coordinate with the Member's employer and a corrective payment shall be made in the Member's pay from the Member's employer as soon as is reasonably practicable following KCERA's discovery of the Overpayment.

b. If the Overpayment is discovered in a different calendar year from the calendar year in which the Overpayment was made to the Plan, KCERA shall make a corrective distribution to the Member in accordance with Rev. Proc. 2018-52.

c. Overpayments (principal only) of \$10 or less will only be refunded at the request of the Member.

4. Due Process

If a member disagrees with Staff's decision regarding resolution of the Underpayment of contributions, the Member shall be advised of their right to participate in an administrative appeal process provided by KCERA.

POLICY REVIEW AND HISTORY

- 1) This policy was:
 - a) Adopted by the Board on February 13, 2019.