

**OVERPAYMENT AND UNDERPAYMENT
OF MEMBER BENEFITS POLICY**

(formerly known as "Correction of Errors in Benefit Payments - Principles, Policy and Procedures")

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 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 benefit overpayments and underpayments, it is KCERA's policy to review any overpayment or underpayment promptly and to make such reasonable, diligent, and systematic efforts as are appropriate under the circumstances to return to a Member the amount of any underpayment of benefits and to return to the Plan, the amount of any overpayment of benefits, consistent with this Policy, and procedures established by the Board and in compliance with Revenue Procedure ("Rev. Proc.") 2018-52.

PURPOSE

The purpose of this Policy is to provide guidelines and a process for evaluation and collection or repayment of funds owed to a Member¹ or KCERA. Therefore, when KCERA has paid a Member an amount under or in excess of that to which the Member is entitled under provisions of the KCERA defined benefit plan (the "Plan") or other applicable law, including the CERL (County Employees Retirement Law of 1937), every reasonable effort shall be made to pay or collect the amount of such underpayment or overpayment, consistent with this Policy and procedures established by the Board and in compliance with Revenue Ruling 2018-52.

This policy is designed for use when errors affect an individual Member's benefits. In the event of a system-wide Overpayment or Underpayment that affects multiple Members' benefits, 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

<u>Underpayment(s)</u>	Any amount delivered to the Member by the Plan that is less than that to which the Member is entitled under the Plan.
<u>Overpayment(s)</u>	Mistaken or excess benefit payment(s) made to the Member by the Plan.
<u>Resolved</u>	<p>With regard to Underpayments, the issue is “Resolved” when the Plan has remitted the amount of the Underpayment(s), including interest, if applicable.</p> <p>With regard to Overpayments, the issue is “Resolved” when the Plan has received full payment of the amount of the Overpayment(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.</p>
<u>SRBR Benefits</u>	The Board has statutory authority to determine the method of distribution of funds allocated to the Supplemental Retiree Benefit Reserve (“SRBR”). SRBR is funded out of “excess [investment] earnings” of the retirement system and supplemental benefits are not vested in that excess earnings cannot be guaranteed. In determining whether to recoup Overpayments of SRBR Benefits, the Board is not required to consider the constitutional and statutory principles applicable to recovery of overpaid vested benefits since those principles do not apply to SRBR Benefits, but shall weigh the cost of recovery against the amount to be recovered and the likelihood of recovery.
<u>Appropriate Interest</u>	Consistent with Revenue Procedure 2018-52, interest on an Overpayment to a Member shall be due to KCERA, or to the Member in the case of an Underpayment, as set forth in this Policy.
<u>KCERA’s credited Interest rate</u>	The rate of interest credited to the Member Reserve in accordance with KCERA’s Interest Crediting Policy.
<u>Final Calculation</u>	Notification designated as “FINAL CALCULATION” by KCERA to Member regarding the total Overpayment or Underpayment , including appropriate interest, as applicable.

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 benefit 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 all reasonable actions set forth in this Policy.

2. Notification

- a. KCERA's Executive Director shall report any Underpayment or Overpayment to a Member that exceeds \$10,000 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 Benefits by the Plan

1. Resolution

- a. When an Underpayment of benefits is discovered, KCERA shall, after appropriate written notice to the Member, make a prospective adjustment to the Member's benefit (if necessary) in order to correct the Member's benefit and shall repay any underpaid benefits through a retroactive lump sum payment, with interest (if applicable), subject to the provisions of this policy, applicable law, and IRS Regulations and guidance in place at the time the Underpayment is discovered.

(1) **Mistake in Fact** - In the case of an Underpayment that arises due to a mistake in fact (e.g., a calculation error), the Member shall be entitled to a retroactive lump sum payment in an amount equal to the amount underpaid since the Member's retirement, plus applicable interest identified in this Policy.

(2) **Mistake in Law** - In the case of an Underpayment that arises due to a mistake in law (e.g., excluding or including an item of pay from the definition of “compensation earnable” or “pensionable compensation,” as applicable, and such exclusion is later determined to be an incorrect application of law), the Member shall be entitled to a retroactive lump sum payment in the amount that would have been paid during the three year period prior to discovery of the error, plus applicable interest; offset by the contributions to KCERA that would have been paid by the Member but for the mistake in law, together with applicable interest.

2. Interest

- a. KCERA shall include interest in its repayment only if the Underpayment of benefits is not resolved within the same calendar year in which the Underpayment was made.
- b. Interest shall be calculated using KCERA’s credited interest rate during the period of the Underpayment.
- c. Interest will be charged on the Underpayment(s) from the time of the Underpayment until the time of the final calculation by KCERA.

3. Due Process

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

C. Overpayment of Benefits by the Plan

1. Resolution

- a. Whenever an Overpayment of benefits is discovered, KCERA shall, after appropriate written notice to the Member, make a prospective adjustment to the Member’s benefit (as necessary) in order to get the Member on the correct monthly benefit and shall take all reasonable steps to recover the full amount of all past Overpayment(s), with interest, subject to the provisions of this Policy and applicable law.
- b. KCERA will recover Overpayment(s) either by (a) lump sum payment from the Member or (b) additional amounts deducted from the Member’s future monthly benefit(s), 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.

2. Overpayment Exceeding \$20,000

- a. Overpayment(s) for which the principal exceeds \$20,000 should result in a full payment of the overpaid amount, plus applicable interest. For purposes of this Policy, full payment may include an installment repayment plan for the full amount owed, including applicable interest. A resolution on these terms does not require Board approval.
- b. Overpayment(s) for which the principal exceeds \$20,000 and do not result in an immediate full payment, including applicable interest, as described in the Section C.1.a., must be approved by the Board.

3. Overpayment of \$20,000 or less

- a. Overpayment(s) for which the principal amount does not exceed \$20,000, should result in a full payment of the overpaid amount, plus applicable interest. For purposes of this Policy, full payment may include an installment repayment plan for the full amount owed, including applicable interest. A resolution on these terms does not require Board approval.
- b. Subject to the procedures in the Policy, and IRS Regulations and guidance in place at the time the Overpayment is discovered, the Executive Director will have discretion to resolve any Overpayment of \$20,000 or less, excluding interest.
- c. Collection of Overpayments for principal amounts less than \$100, or such other amount identified by the IRS as a small overpayment subject to exception from full correction, shall only be pursued as directed by the Executive Director.

4. Interest

- a. Interest shall be calculated using KCERA's credited interest rate during the period of the Overpayment.
- b. KCERA shall charge the Member interest only if the Overpayment of benefits is not resolved within the same calendar year in which the Overpayment was made.
- c. Interest will be charged on the Overpayment(s) from the time of the Overpayment until the time of the final calculation by KCERA.

5. Due Process

- a. Prospective Corrections - KCERA will prospectively correct benefit Overpayment(s) to reflect the correct amount to which the Member is entitled or eligible after providing written notification to the Member.

- b. Past Overpayment(s) - KCERA shall not further reduce a Member's benefit (whether vested or SRBR payments) as an offset to recoup Overpayments until the Member has 1) signed an Agreement to repay the Overpayment or 2) has been provided at least 30 days' notice of KCERA's intent to recoup the Overpayment(s) and been given an opportunity to participate in the administrative appeals process.
6. Procedures and Considerations for Evaluating Collection of Overpayment(s) in Certain Cases

- a. In situations where, upon review of the totality of the circumstances, KCERA determines that full payment is unreasonable, KCERA may settle (i.e., accept less than full repayment of overpaid benefits, including applicable interest) a claim for Overpayments of benefits, whether vested or non-vested, pursuant to the following guidelines:

- (1) All settlements must be reasonably prudent under the circumstances of the particular case.
- (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 Overpayment of benefits occurred or five years, whichever is shorter..

Settlement agreements may be signed by the Executive Director, or designee, in all cases except where the principal amount of the Overpayment(s) exceeds \$20,000. In cases where the principal amount exceeds \$20,000, 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 Overpayment (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 Overpayment from the plan sponsor or some other individual or entity.
- c. KCERA will abandon claims for collection of overpaid benefits only if it concludes that settlement is not possible and pursuing the claim is unreasonable under the totality of the circumstances.
- d. The Executive Director shall document in a memorandum to the file the bases for abandoning or settling a claim (whether in whole or in part).



POLICY REVIEW AND HISTORY

- 1) This policy was:
 - a. Adopted by the Board in March 22, 2000.
 - b. Reviewed and amended by the Board in February 12, 2014 and on April 10, 2019.