

SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM
ERRORS, CORRECTIONS AND COLLECTION POLICY

I. PURPOSE

The purpose of this policy is to establish criteria and a framework for resolving debt collection issues with members and beneficiaries as a result of incorrect payments into or out of the retirement system (the "System"). It is the intent of the Board of Retirement (the "Board") in adopting this policy to fulfill its fiduciary effort to safeguard fund assets by making reasonable efforts to recover overpayments and collect underpayments with appropriate interest thereon.

II. BACKGROUND

Debts from members and beneficiaries can be caused in a variety of ways, including death related overpayments, incorrect computation of benefits or member contributions, payments or collections found to be in error because of a change in applicable law, and other miscellaneous causes.

III. OBJECTIVE

The primary objective is to preserve and protect fund assets and to collect contributions and distribute benefits in accordance with applicable law. If an error has been identified, it should be corrected as soon as possible. When reasonable to do so, any debt to the System resulting from such error should be recovered pursuant to the procedures outlined below.

IV. PROCESS FOR RESOLVING OVERPAYMENTS

- A. In the cases of the discovery of error affecting individual members or beneficiaries, staff shall verify the error and implement a plan to correct the error, including notification of the member and correction of future payments to or from the System with the next available payroll.
- B. Where debt remains after prospective correction, the general procedure for collection of debt will be as follows:
 - 1. Principal amounts of up to \$100 may be written off by the CEO without initiation of collection efforts.
 - 2. Principal amounts between \$100 and \$1,000 may be written off or compromised by the CEO after a reasonable collection effort has been completed.

3. For principal amounts between \$1,000 and \$10,000, the CEO has discretion, after the completion of reasonable collection efforts, to either commence further efforts such as negotiation or litigation, or to compromise or write off the amount due. In exercising this discretion, the estimated cost of litigation, the likelihood of recouping payment and resulting hardship to the member or beneficiary will be considered.
 4. For amounts over \$10,000, the CEO shall, after reasonable collection efforts as well as negotiations have been completed, seek direction from the Board to either commence litigation or write off the amount due.
 5. All actions taken by the CEO in connection with items 1 – 3, including amounts collected and amounts written off, shall be reported to the Board as part of its annual budget review process.
 6. Collection efforts shall include a notice setting forth the amount owed, an explanation of the cause of and calculation of the amount owed, and the alternatives for repayment and may include additional verbal and written demands for payment.
 7. A debt of the CEO or a Board member of SBCERS will not be written off without approval of the Board. A debt of an employee of SBCERS, other than the CEO, of more than \$1000 will not be written off without approval of the Board.
- C. In the event of a systematic error affecting a large number of System members, the foregoing rules will not apply. In such circumstances, staff shall develop a plan for correction, and collection where appropriate, for presentation to the Board for consideration and approval.

V. STATUTES OF LIMITATION

Pursuant to California law, as interpreted by the courts, there are time limits applicable to collection of debts owed to it in certain circumstances. Determination of the applicable statute of limitation will be made, in particular circumstances, in consultation with the System's counsel prior to determining the amount of principal due pursuant to Section IV of this policy. Generally, applicable periods of limitation are as follows:

- A. In circumstances where SBCERS made an erroneous payment to a member or beneficiary, or has received contributions from the member that are less than that due, the System may seek recovery of underpayments from the member or overpayments to the member occurring up to three (3) years prior to the initiation of legal action for collection.

- B. The System may seek recovery of underpayments from the member or overpayments to the member occurring more than three years prior to the initiation of legal action where the System discovered the underpayment or overpayment more than three years after the payment was made and where the System, exercising reasonable diligence, could not have discovered the error at an earlier date.

- C. In the event of (i) an error made in the calculation of a member's monthly allowance or other benefit, as a result of fraudulent reports for compensation made, or caused to be made, by the member for his or her own benefit, or (ii) the member caused his or her final compensation to be improperly increased or otherwise overstated at the time of retirement and the system applied that overstated amount as the basis for calculating the member's retirement allowance or other benefit, the period of limitations is 10 years pursuant to Government Code Section 31539, and the limitation period shall run from the date of payment or the date of actual discovery, whichever is later.

- D. These limitation periods apply to the collection of debts but shall not affect the ability of SBCERS to correct errors, as necessary, in a member's account, prospectively or retroactively. Where a correction has been made with respect to a member's plan membership status resulting in an advantage to the member and a resulting deficiency of member contributions, the System may seek to recover resulting under-contributions without a limitation period.

- E. The statute of limitations will not be applied to limit payment of debts owed to a member or beneficiary as a result of administrative error, and due to no fault of the member or beneficiary. However, such policy shall not preclude SBCERS from relying on the defense of the statute of limitations, or the equitable defense of laches, with regard to disputed or stale claims.

VI. INTEREST

When collection of debts is pursued, SBCERS shall seek to recover an award of interest on the principal amount of indebtedness at the rate of interest that is regularly credited by the System to member accounts. Since June 30, 2008, that amount has been the equivalent of the yield of the five year treasury note, measured twice annually, not to exceed the assumed rate of return. Similarly, when an error is made resulting in an underpayment to a member or beneficiary, or where a member has made contributions in excess of those due, payment shall be made to the member or beneficiary of principal, with interest calculated at the same rate.

VII. MEMBER REPAYMENT AGREEMENTS

Whenever collection efforts are made, every effort will be made to reach a consensual agreement with the member for repayment before the initiation of litigation, by deductions from a member's benefit payment or otherwise. In that regard, the CEO has discretion to approve reasonable agreements for repayment of overpayments over time, including payment of interest that satisfy the obligation to repay the System without imposition of undue hardship on the member or beneficiary.

VIII. DISPUTES REGARDING AMOUNTS DUE

It is acknowledged that a member or beneficiary may disagree with staff's calculation of amounts due or its determination of the basis for liability. Notwithstanding the discretion accorded to the CEO pursuant to Section IV.B.3, a member or beneficiary may seek review by the Board of the CEO's decision to pursue litigation for collection of debt, provided the member or beneficiary executes an agreement to suspend the statute of limitations on such claim to enable Board review of the matter without prejudice to the System. Similarly, with respect to Board decisions to initiate litigation pursuant to Section IV.B.4, the member or beneficiary shall be provided with the opportunity to address the Board prior to a decision by the Board to initiate litigation.

IX. APPLICABLE LAW

This policy shall be interpreted and administered in accordance with applicable law, including all applicable tax rules and regulations. To the extent there is a conflict between this policy and any such law, rule or regulation, then the applicable law, rule or regulation will govern.

X. REVIEW

The Retirement Board shall review this Errors, Corrections and Collection Policy at least once every three (3) years to ensure that it remains relevant and appropriate.

XI. PROCESS HISTORY

This Policy was adopted by the Retirement Board on October 28, 2015 and revised on August 23, 2017.