

**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA)**  
**POLICIES AND PROCEDURES GOVERNING THE OVERPAYMENT OR UNDERPAYMENT OF**  
**MEMBER CONTRIBUTIONS**

The Board of Retirement ("Board") has a fiduciary obligation to conserve retirement fund assets and protect the integrity of the fund, for the benefit of the members and beneficiaries of the Fresno County Employees' Retirement Association ("FCERA").

The Board determines the required member contributions in accordance with law and in consultation with its actuary. Subject to all applicable laws, it shall be FCERA's policy to make every reasonable effort 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 the procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of member contributions, and within a reasonable period of time after written notification to the affected member, FCERA will correct any overpayment or underpayment of member contributions.

These policies and procedures are 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 that it determines is appropriate under all the circumstances.

In the event of any inconsistency between applicable law and these Policies and Procedures, the law shall take precedence.

**I. Underpayment of Contributions by Members**

- 1) Whenever an underpayment of contributions is discovered, FCERA shall make a prospective adjustment to the member's contributions and take all reasonable steps to recover the full amount of all past underpayments, with "appropriate interest," subject to the provisions of this policy and applicable law. If the underpayment was due to fraud or dishonest conduct by the member, or to the member providing inaccurate information to FCERA or the member's employer, appropriate interest shall be FCERA's actuarial assumed rate of return that was applicable for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid. If the underpayment was the result of an error by FCERA or the member's employer, appropriate interest shall be 3% per annum for the period in which the underpayments occurred. Financing of installment payments will be based on FCERA's current actuarial assumed rate of return.
- 2) FCERA will recover underpayments either by (a) a lump sum payment from the member, (b) additional amounts added to the member's future contributions, over a period of time as determined by the Board, or (c) pre-tax offsets to future benefit payments to the member, over a period of time as determined by the Board, unless the Board, in its

discretion and because of legal or practical considerations, determines that another process is warranted.

- 3) The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of underpayments only where the cumulative total amount underpaid by the member is \$50 or more. Accordingly, the Administrator is authorized to not seek recovery of any underpayments where the total amount underpaid by the member is less than \$50.
- 4) The Administrator shall have authority, on the advice of legal counsel, to compromise recovery of underpayments when the total amount of underpayment, not including interest, is less than \$5,000. Only the Board may compromise claims in which the total amount of underpayment, not including interest, is \$5,000 or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the Administrator and/or the Board when determining whether to compromise a claim. Compromising claims may include a different method of repayment than is otherwise provided by this policy and/or a partial forgiveness of the amounts underpaid.
- 5) In cases where there is no evidence that the underpayment resulted from the fraud or dishonest conduct by the member, or from the member providing inaccurate information to FCERA or the member's employer, FCERA will only seek recovery of amounts underpaid by the member for the three years from date of discovery. Considering all relevant factors (including collection issues and principles of equity), the Board finds that seeking only three years of underpayments under those circumstances constitutes "reasonable steps" to recover the full amount of the underpayments. In cases where there is evidence that the underpayment resulted from fraud or dishonest conduct by the member, or from the member providing inaccurate information to FCERA or the member's employer, the Board reserves all rights to seek all amounts underpaid, plus the maximum amount of recoverable interest under law. The Board shall determine whether the member engaged in fraud or dishonest conduct, or provided FCERA or the member's employer with inaccurate information, based on all of the facts available to it.

## **II. Recovery of Underpayments**

- 1) Underpayments by Currently Employed and Retired Members: The Board adopts the following procedures for accomplishing the recovery of underpaid contributions by members currently employed by FCERA plan sponsors and retired members:
  - a) Upon discovery of an underpayment, FCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the currently employed or retired member advising the member of the underpayment and proposing a repayment schedule, as follows:
    - i. The letter will request payment to FCERA of the amount underpaid, subject to the provisions of this Policy.

- ii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.
  - iii. The agreement to pay the amounts underpaid will provide two options:
    - Option 1 – equal installments deducted from the currently employed member’s pay (in addition to the contributions otherwise required of the member), or benefit payments if the member is retired, not to exceed the same length of time that the underpayments occurred, with appropriate interest (as defined in Section I, subsection (1) above) applied for the underpayment period and the payment period. If the member’s employment terminates during the payment period, the member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts FCERA owes the member (in retirement benefits or otherwise), if the member does not make a lump sum payment.
    - Option 2 – lump sum payment to FCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied during the underpayment period.
  - iv. The letter and agreement to pay underpaid amounts will provide that Option 1 will go into effect by default if a written response from the member is not received within 30 days following the date the letter was delivered.
- b) If the amount of the underpayment, not including interest, is \$5,000 or more, FCERA staff will attempt to contact the member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
  - c) FCERA may pursue all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.
  - d) FCERA will maintain a permanent record of all amounts of underpayments and the payment to FCERA of those underpayments.
- 2) Underpayments by Members No Longer Employed by a FCERA Plan Sponsor: The Board adopts the following procedures for accomplishing the recovery of underpaid contributions by members who have yet to retire but are no longer employed by a FCERA plan sponsor:
- a) Upon discovery of an underpayment, FCERA shall send a letter by certified mail, return receipt requested, or by express delivery service, to the previously employed member advising the member of the underpayment and proposing a repayment schedule, as follows:
    - i. The letter will request payment to FCERA of the amount underpaid, subject to the provisions of this Policy.

- ii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.
  - iii. The agreement to pay the amounts underpaid will provide two options:
    - Option 1 – payment of equal installments to FCERA by the previously employed member over the same length of time that the underpayments occurred, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied for the underpayment period and the payment period. If the member defaults under the agreement during the payment period, the member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts FCERA owes the member (in retirement benefits or otherwise), if the member does not make a lump sum payment.
    - Option 2 – lump sum payment to FCERA for the full amount underpaid, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied during the underpayment period.
  - iv. In the event the member regains employment with any of FCERA’s plan sponsors, or in the event the member attempts to establish reciprocity with FCERA after gaining employment with an agency with which FCERA establishes reciprocity, equal installments shall be deducted from the re-employed member’s pay (in addition to the contributions otherwise required of the member), over the same length of time (or remaining length of time if the member had already begun making payments under an agreement with FCERA) that the underpayments occurred, with appropriate interest (as that phrase is defined in Section I, subsection (1) above) applied for the underpayment period and the payment period..
- b) If the amount of the underpayment, not including interest, is \$5,000 or more, FCERA staff will attempt to contact the member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
  - c) FCERA may pursue all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.
  - d) FCERA will maintain a permanent record of all amounts of underpayments and the payment to FCERA of those underpayments.

### **III. Overpayments of Contributions by Members**

- 1) When a member has overpaid contributions, the member shall be entitled to a prospective adjustment to his or her contributions necessary to correct the overpayment, as well as a lump sum payment for all past overpayments, with interest at the rate credited to member accounts, throughout the applicable period of overpayment. Interest shall accrue on each overpaid amount from the date of the overpayment to the date of

the lump sum corrective payment. The payment shall be made in the member's pay from their FCERA participating employer as soon as is reasonably practicable following FCERA's discovery of the overpayment.

2) If a member who overpaid contributions has died prior to payment of the lump sum amount due, the following procedures will be followed:

a) Member with Designated Beneficiary

i. If the member has named a designated beneficiary, the payment will be made directly to the designated beneficiary. See CERL Section 31452.7.

b) Member Without Designated Beneficiary

i. If there is an open estate (i.e., no order for final distribution yet), payment will be made to the estate (through the personal representative).

ii. If final distribution of the estate has already been made, FCERA staff will review the order for final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.

iii. If an estate was not established, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property on file with FCERA. See Prob. Code Section 13101.

iv. FCERA staff shall make reasonable efforts to locate the person(s) entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such person, or by other means of similar intended effect. The letter shall request written confirmation that the person entitled to payment still lives at that address and will accept payment. Upon receipt of such written confirmation, the payment will be mailed to that person at that address. See CERL Section 31783.5(b).

v. If, after taking the above steps, FCERA staff has not been able locate a person entitled to payment, FCERA 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 claims the funds, the Board will consider such claims on a case-by-case basis. See CERL Section 31783.5(c).

vi. FCERA will maintain a permanent record of all amounts of outstanding refunds of overpayments and any amounts that have been transferred into the pension reserve fund.

- vii. In cases where there is no designated beneficiary and the total amount of overpayment is less than \$50, FCERA staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to FCERA, however, will be considered regardless of size.
- 3) Overpayments of \$5 or less will only be refunded at the request of the member.

**IV. Policy Review**

- 1) This policy will be reviewed at least every three years.

**V. Policy History**

- 1) This policy was adopted by the Board on December 15, 2010.
- 2) The Board of Retirement reviewed this policy on December 16, 2015, July 20, 2016, April 17, 2019, and March 16, 2022.

**VI. Secretary's Certificate**

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

March 16, 2022

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***Date of Action:***

*Donald C. Kendig*

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***By: Retirement Administrator***