

OCERS Board Policy

Overpaid and Underpaid Plan Contributions Policy

Purpose and Background

1. The purpose of the Orange County Employees Retirement System (“OCERS,” “System,” or “Plan”) *Overpaid and Underpaid Plan Contributions Policy* (“policy”) is to provide a framework for resolving erroneous collection of plan contributions from OCERS Members and employers. The OCERS Board of Retirement (“Board”) is responsible for administering the System in a manner that assures appropriate and prompt delivery of benefits and related services to Members and their beneficiaries and of managing the System's assets in a prudent manner.

In the event that an overpayment is the result of a felony conviction, OCERS Administrative Procedure (OAP) on *Felony Forfeitures* shall be used as a basis for resolution, instead of this Policy.

Policy Objectives

2. The Board determines, in consultation with its actuary and in accordance with the law, the amount of required Member and employer contributions to the Plan. Subject to all applicable laws and consistent with this policy and the procedures established by the Board, it is OCERS’ policy to make every reasonable effort to recover from a Member or employer the amount of any underpaid contributions to the Plan, and remit or credit to a Member or employer the amount of any overpaid contributions to the Plan, to the extent applicable in accordance with applicable Internal Revenue Service guidance.

Policy Guidelines

3. As soon as practicable after discovery of overpaid or underpaid contributions and after written notification to the affected Members, survivors, beneficiaries, or payees (herein referred to as “Members”) and employer, OCERS will (i) correct the contribution amount for active Members and employers prospectively; and (ii) pay or credit to, or collect from, the Member and credit to or collect from the employer, the amounts to which the Member, employer or the Plan is entitled in accordance with this policy and applicable law.
4. This policy is designed for use when calculation and other errors affect contributions made on behalf of an individual Member. For corrections of errors affecting the overpayment of individual Member’s retirement benefits identified on or after 2024, the correction process to be implemented shall be consistent with the requirements of Government Code § 31541.2, as outlined in Section 15 below.
5. In the event of a system-wide error that affects contributions made on behalf of multiple Members, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances. The determination by the Board of a correction process to be implemented shall be made consistent with the requirements of Government Code § 31541.2, as outlined in Section 15 below. In the event of any inconsistency between applicable law (including IRS rules and guidance) and these policies and procedures, the law shall govern.

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Procedures for Underpaid Contributions

Employers

6. When an employer has underpaid plan contributions, the employer will be required to:
 - a. Pay to the Plan the underpaid contributions associated with Member compensation earned in prior fiscal years as soon as reasonably practicable, and
 - b. Pay to the Plan the underpaid contributions associated with Member compensation earned in the current fiscal year no later than the end of the current fiscal year.

Interest on the underpaid contributions shall be charged to and paid by the employer at the System's actuarially assumed rate of return. For purposes of this policy, underpaid employer contributions shall include any portion of underpaid Member contributions to the extent the employer elected to pay such portion on behalf of a Member pursuant to Government Code section 31581.1. Such amounts shall be recovered from the employer under this Section 6, and not from the Member under Section 7 below.

Members

7. **Active Members.** Subject to Section 10(a) below, when an active Member has underpaid contributions to the Plan, OCERS will (i) make a prospective correction to (increase in) the Member's contribution rate to the Plan to reflect the correct amount of Member contributions to the Plan to prevent additional underpaid contributions; and (ii) take all reasonable steps to recover the full amount of all underpaid contributions, going back to the inception of the error, and charge interest to the Member using the rate of interest credited by OCERS to Member contributions, compounded annually during the period in which the contributions were underpaid and during any repayment period, i.e., applied to the outstanding amount due until fully repaid.

- The amount of the Member's underpaid contributions for active members will be collected in accordance with section 9 below.
- If the active Member retires or becomes a deferred Member of the Plan prior to repayment in full of the underpaid contributions, the remaining amount owing to the Plan will be collected in accordance with section 8 below.

8. **Retired and Deferred Members.** Subject to Section 10(a) below, when a retired or deferred Member has underpaid contributions to the Plan, OCERS will collect the full amount of all underpaid contributions, going back to the inception of the error, and charge interest to the Member using the rate of interest credited by OCERS to Member contributions, compounded annually during the period in which the contributions were underpaid.

The amount of the Member's underpaid contributions for retired and deferred Members will be collected in accordance with section 9 below.

9. The Board adopts the following procedures to recover underpaid contributions by Members to the Plan:

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- a. **For Active Members.** Upon discovery of the underpaid contributions, OCERS will notify the Member of the prospective adjustment to increase the Member's contribution rate to the Plan (to reflect the correct amount of member contributions to the Plan) and provide the Member with the following two options:
 - *Option 1* – Equal pre-tax installment payments deducted from the member's biweekly salary over the same length of time that the underpaid contributions occurred, with interest as set forth in section 7 above applied during the underpayment period and during the repayment period; or
 - *Option 2* – Lump sum payment to the Plan for the full amount underpaid, with interest as set forth in section 7 above applied during the underpayment period.
 - b. **For Retired and Deferred Members.** Inform the Member of the underpayment and provide the member with the following two options:
 - *Option 1* – Equal installments deducted from the Member's monthly pension amount over a period established in the discretion of the Director of Member Services not to exceed five years; or
 - *Option 2* – Lump sum payment to the Plan for the full amount underpaid, with interest as set forth in section 8 above applied during the underpayment period.
 - c. In cases of extreme hardship, the Member may request, and the OCERS Chief Executive Officer (CEO) may grant, a longer period of repayment of the underpaid contributions
 - d. OCERS may pursue all legal remedies to collect such underpaid Member contributions to the Plan, including making a claim against the Member's estate or trust. In addition, if the Member dies before the full amount of principal and interest is paid, OCERS may recover the remaining principal and interest from any lump sum amount OCERS is obligated to pay to the Member's estate or named beneficiaries of the Member, provided, however, OCERS shall not seek to recover any such remaining amounts from any continuation payments made to a surviving spouse or an optional beneficiary of the Member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.
10. Compromising Claims.
- a. If the entire amount of underpaid contributions by an active, deferred, or retired Member under Sections 7 or 8 above does not exceed \$100 (including interest), OCERS shall not be required to collect the underpaid contributions if, in the judgment of the CEO, in consultation with legal counsel, the costs of processing and collecting the underpaid contributions would exceed the amount owed to the Member, provided that, in the case of ongoing contributions, the contribution rate shall promptly be adjusted (increased) prospectively.
 - b. When the total amount of the Plan's claim against the Member, not including interest, is \$1,000 or less, the CEO, on the advice of legal counsel, shall have the authority to compromise the claim.

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- c. Only the Board may compromise claims in which the total amount of such underpaid contributions, not including interest, is greater than \$1,000.
- d. The amount of the Plan's claim for underpaid contributions is the difference between the amounts actually paid by the Member and the amounts that should have been paid, together with "appropriate interest" from the dates of the actual contributions to the date(s) the correction is effective. The likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the Member will be considered by the CEO and/or the Board when determining whether to compromise a claim. Compromising a claim may include a different method of repayment than is otherwise provided by this policy and/or forgiveness or partial forgiveness of principal and/or interest, subject to applicable IRS rules and guidance.
- e. To the extent OCERS cannot recoup all underpaid contributions and interest from the Member, any shortfall will be recouped from the employer as part of the annual actuarial valuation process.

Procedures for Overpaid Contributions for Benefit Calculations Not Involving Disallowed Compensation

Employers

- 11. When an employer has overpaid contributions to the Plan, including overpaid Member contributions that the employer paid on behalf of the Member pursuant to Government Code section 31581.1, the employer shall be entitled to a credit to its actuarial accrued liability in the amount necessary to correct the error, plus interest at the System's corresponding actuarial assumed rate of return.

Members

- 12. When a Member has overpaid contributions to the Plan, except as provided in Section 14 below, (i) an active Member shall be entitled to a prospective adjustment to his or her contribution rate to reflect the correct amount, and OCERS will inform the employer of the amount of the overpayment and the employer will offset the amount against the Member's future contributions via the employer's payroll system; and (ii) except as provided in Section 14 below, retired and deferred Members will be entitled to a lump sum payment as soon as practical after discovery of the overpayment and receipt of all information needed to make the correction for all past overpaid amounts, with interest compounded annually using the rate of interest credited by OCERS to Member contributions.
- 13. If a Member who overpaid contributions to the Plan dies prior to payment of the lump sum amount due, the payment, including interest, will be made according to OCERS' standard procedures for paying residual amounts following the death of the Member, e.g., to the designated beneficiary, estate, personal representative, trustee of the Member trust, etc.

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- a. If, after following its standard procedures and applicable IRS guidance, Plan staff is not able locate a person entitled to payment, the Plan 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 appears to claim the funds, the Board or the CEO will consider such claims on a case-by-case basis.
 - b. The Plan will maintain a permanent record of all amounts of outstanding refunds of overpaid contributions and any amounts that have been transferred into the pension reserve fund.
14. If the total amount that the Plan would owe an active, deferred, or retired Member under Section 12 above is \$75 or less, the Plan is not required to make the lump sum payment or offset the amount against future contributions for the Member if, in the judgment of the CEO in consultation with legal counsel, the reasonable direct costs of processing and delivering the distribution to the Member would exceed the amount of the distribution.

Procedures for Overpaid Contributions on Disallowed Compensation

15. Per AB 3025, and as codified in Gov. Code Section 31541.2, when OCERS "Initiated a Process" (as defined below) before January 1, 2024, to recalculate a Member compensation earnable under Section 31461 to exclude Disallowed Compensation (as defined below) and return contributions, it may continue using that process to ensure compliance with PEPRA and the holding in *Alameda County Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 (*Alameda*). When OCERS determines the reporting of Disallowed Compensation on or after January 1, 2024, the procedures to correct overpayments of benefits shall follow those contained in this Section 15.
- a. Definitions:

"Disallowed Compensation" means compensation reported by an employer to OCERS as pensionable compensation for a Member, that OCERS later determines is non-pensionable compensation and, therefore, not in compliance with the requirements of CERL, PEPRA, the *Alameda* holding, or OCERS Board policies and regulations through no fault of the Member. Disallowed Compensation also includes nonpensionable compensation that was previously included in an agreement.

"Initiated a Process" means that the Board has formally adopted a resolution or an administrative determination has been made to implement a correction process requiring the collection of any portion of an overpayment from, or refunding of Member contributions to, any affected active or retired Member (or their survivor or beneficiary), or permanent adjustment to the retirement benefit of any affected active or retired Member (or their survivor or beneficiary), as a result of a determination that the Disallowed Compensation was erroneously reported as pensionable compensation by the Member's employer.
 - b. Upon OCERS' determination that Disallowed Compensation was reported for a Member, OCERS will require the employer to discontinue reporting the Disallowed Compensation.

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- c. All employer contributions made on Disallowed Compensation will be credited against future contributions to the benefit of the employer who reported the Disallowed Compensation.
- d. For active and deferred Members, any Member contributions paid by or on behalf of the Member on the Disallowed Compensation will be returned to that Member, either directly or indirectly through the employer.
- e. For retired Members (or their survivors or beneficiaries) whose final compensation at the time of retirement was based on Disallowed Compensation, any Member contributions paid by or on behalf of the Member on the Disallowed Compensation will be returned directly to the Member (or their survivor or beneficiary) and OCERS will permanently adjust the benefit of the retired Member (or their survivor or beneficiary) to reflect the exclusion of the Disallowed Compensation.
- f. For the related benefit corrections associated with the corrected contributions pursuant to this Section 15 for Disallowed Compensation, please refer to OCERS' Overpaid and Underpaid Plan Benefits Policy.
- g. Upon the employer's request, OCERS will provide the employer with contact information data in its possession of a relevant retired Member (or their survivor or beneficiary) for the employer or agency to fulfill their obligations to that retired Member (or their survivor or beneficiary) under this policy. The employer shall keep this contact information data confidential, shall use such contact data only to the extent necessary to carry out its duties under this policy, and such contact data shall not be disclosable under the California Public Records Act.

Administrative Review

- 16. A Member may request administrative review of any decision regarding corrective actions that the Plan takes to recover or return over and underpayments of Plan contributions.
- 17. The review process will generally follow the same pattern as the review process for benefit determinations pursuant to the Board's Administrative Review and Hearing Policy. Efforts to collect underpaid contributions will be stayed, but contribution rates will be prospectively adjusted to prevent additional underpaid contributions, during the pendency of the review process; provided, however, that the Board shall have the discretion to suspend implementing its recovery from the Member in whole or in part during any ensuing court action. Interest will continue to accrue on all amounts owed to OCERS during the appeals process and litigation.

Policy Review

- 18. The Board will review this policy at least every three (3) years to ensure it remains relevant and appropriate.

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Policy History

19. This policy was adopted by the Board of Retirement on January 16, 2019, and revised on November 15, 2021, and April, 21, 2025.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney
Secretary of the Board

4/21/2025

Date