



Merced County Employees' Retirement Association

## **Error Correction Policy**

### **Purpose**

The purpose of this policy is to establish a framework for correcting errors in connection with the payment of member benefits and the collection of member contributions. In particular, this policy sets out MercedCERA's authority and procedures for making prospective corrections (i.e., adjusting benefits and contributions on a going forward basis) and retroactive corrections (i.e., recouping past over-payments and refunding past over-collections) in accordance with the MercedCERA Bylaws.

### **Policy**

This policy pertains to three categories of errors caused by the acts and omissions of MercedCERA and/or MercedCERA members:

1. Overpayment of member benefits;
2. The over-collection or under-collection of member contributions; and
3. The underpayment of member benefits.

For the avoidance of doubt, this policy, and the procedures, do not apply to errors, under-collections, over-collections, and other correctible events driven by employer operations.

### **Interest**

All references to "interest" refers to the semiannual interest crediting rate for Member and or Retirees for the period(s) to be corrected. Active and deferred members will be paid the interest credited on their accounts in accordance with the MercedCERA Board Approved Interest Crediting Policy and retirees' interest will be the average of the ten year US Treasury Bond over the period of over/under payment. The Board of Retirement has the ability and discretion to change the interest rate, as needed, dependent upon the circumstances of the under/over payment or collection of contributions.

### **Correcting the Overpayment of Member Benefits**

On occasion, MercedCERA may discover that it has paid a retirement allowance or other benefit to a member or beneficiary (collectively, "member") in excess of what is owed under the law. When that occurs, MercedCERA shall take steps to make prospective and retroactive corrections as soon as practicable in accordance with this policy. No action will be commenced by or against the Board of Retirement or the Association more than 10 years after all obligations to or on behalf of the member have been discharged.

Please note, this policy does not apply to rounding of retirement estimates and retirement benefits by the pension administration system. Rounding is considered to be \$2 or less difference between estimates and the benefit payout.

#### **1. Prospective Corrections (Adjusting Benefits Going Forward)**

With respect to prospective corrections, MercedCERA shall adjust the amount of the member's benefit to ensure that, going forward, the member receives a benefit that does not exceed what is owed under the law.

Where there has been a system-wide error affecting a significant number of members, MercedCERA may encounter practical limitations on its ability to gather the facts necessary to recreate the members' final compensation and achieve exact prospective corrections. If, in the judgment of the Board, the cost of such fact gathering and prospective correction exceeds what is administratively prudent under the circumstances, the Board may authorize alternative corrective actions so long as they reasonably protect members' rights and are consistent with the prudent administration of fund assets.

## **2. Retroactive Corrections (Recovery of Overpaid Benefits)**

With respect to retroactive corrections, MercedCERA shall take all reasonable steps to recover and collect overpaid benefits, plus interest, from members in accordance with the following criteria:

- a. Where the overpayment of a benefit was due to fraudulent reports made or caused to be made by the member, or the member caused his or her final compensation to be improperly increased or overstated at the time of retirement, MercedCERA shall seek recovery of such overpayments from the member. See Gov. Code § 31539. MercedCERA may use any and all collection methods and legal remedies that, in its judgment, would facilitate a full recovery. MercedCERA may seek to recover overpayments from the member in a lump sum or by installment plan (which may, but need not be, over the same period of time that the error occurred). MercedCERA may also offset the amount of overpayment to be recovered against future benefit payments. MercedCERA may also seek recovery by adjusting the allowance so that the retired member or the retired member and his/her beneficiary will receive the actuarial equivalent of the allowance to which the member is entitled. MercedCERA may also institute an action against the member for declaratory, legal, and equitable relief. The Plan Administrator as a designee of the Board, may commence action up to 10 years from the date of the overpayment or upon the discovery of the facts, fraud or intentional misrepresentation whichever is later.
- b. Where the overpayment of a benefit was due to an act or omission by MercedCERA, the member, or beneficiary, MercedCERA shall seek recovery of such overpayments from the member. MercedCERA may use any and all collection methods and legal remedies that, in its judgment, will most likely facilitate a full recovery. The right to recovery shall expire 10 years from the date the incorrect payment was made or the discovery of the error was made, whichever is later.
- c. Where the overpayment of a benefit was due to inadvertent error by MercedCERA (including an inadvertent error in statutory or legal interpretation), and such error would (in the judgment of the Board through their designee of the Plan Administrator, with consultation with legal counsel) subject MercedCERA to valid equitable defenses and potential fiduciary claims by the member, MercedCERA need not seek to recover such overpayments from the member unless ordered to do so by the IRS and/or a final, non-appealable order of a court of competent jurisdiction. The right to commence recovery shall expire 10 years from the date the incorrect payment was made or the discovery of the of the error was made, whichever is later.
- d. If the member is not receiving an ongoing benefit and has received an overpayment in a lump sum benefit of up to \$25,000, then the Plan Administrator shall have authority

pursuant to the MercedCERA Bylaws to take action to recover the overpayment. If the member is not receiving an ongoing benefit and has received an overpayment in a lump sum benefit of more than \$25,000, then the Plan Administrator will pursue collection efforts after consultation with the Board.

To the extent MercedCERA is unable to collect any overpayments from members, those overpayments will be reconciled through the Actuarial Accrued Liability as part of the annual actuarial valuation process.

### **3. Correcting Over Collection or Under Collection of Member Contributions**

When MercedCERA has over-collected or under-collected member contributions, MercedCERA shall take steps to make prospective and retroactive corrections as soon as practicable in accordance with this policy.

In the event an active or deferred member overpaid member contributions, MercedCERA will refund the full overpayment amount, plus interest, to such member. In the event contributions were overpaid by a member who has since retired, the full amount of overpaid contributions will be refunded to the member, plus interest, with any offset necessary to recover overpaid benefits, if any.

In the event of an active or deferred member underpaid their contributions, the full underpaid amount must be collected, plus interest, in order for the member to be entitled to their benefits under the law. In the event of any underpaid contributions by a retired member, the full member contribution underpayment will be recouped, plus interest, to support the continuing payment of ongoing monthly benefits supported by those contributions. MercedCERA may recoup the contribution underpayment from the retired member by deducting from their benefits.

MercedCERA shall take actions to collect underpaid contributions and refund overpaid contributions. Although MercedCERA will strive to commence corrective recovery actions in a timely manner, no limitations period applies to the administrative actions described above.

To the extent MercedCERA is unable to recoup any underpaid contributions from members as described above, the shortfall will be reconciled through the Actuarial Accrued Liability as part of the annual actuarial valuation process.

### **4. Correcting the Underpayment of Member Benefits**

When MercedCERA has underpaid a retirement allowance or other benefit to a member, MercedCERA shall take steps to make prospective and retroactive corrections as soon as practicable in accordance with this policy.

With respect to prospective corrections, MercedCERA shall adjust the amount of the member's benefit to ensure that, going forward, the member receives a benefit in the amount owed under the law.

With respect to retroactive corrections, MercedCERA shall pay the member an amount equal to the member's underpayment with interest. Interest will be the average ten year Treasury Bond of the US Government over the period of correction, compounded monthly.

## 5. Notice of Correction and Administrative Appeal

MercedCERA shall notify members of errors, and provide an opportunity for administrative appeal, in accordance with following procedure and MercedCERA's Bylaws:

- a. Upon the discovery of an error concerning the payment of benefits or collection of contributions, MercedCERA staff shall conduct an investigation to determine the cause of the error. As soon as practicable, staff shall form a plan to correct the error prospectively and retroactively in accordance with this policy. Staff shall consult with the Benefits Manager, and the Plan Administrator as appropriate. The Plan Administrator may, in their discretion, decide not to pursue recovery when overpaid benefits are \$1,000 or less.
- b. Staff shall send a Notice of Correction (Notice) to the member containing information about the nature of the error and a proposed plan for prospective and retroactive corrections. The Notice shall be sent via Certified Mail or other method that allows staff to verify its receipt by the member.
- c. If the member does not object, or respond to the Notice of Correction in writing by the date identified in the letter (90 days after date of the Notice), the member will be deemed to have agreed and consented to all aspects of the Notice, including the proposed repayment plan. The repayment plan is thereafter deemed final, and MercedCERA will proceed to implement the recovery plan.
- d. If the member does not agree with the proposed correction plan in the Notice, or any other aspect of the Notice (e.g., whether MercedCERA correctly calculated the error), the member must object to the Notice in writing within the approximately 90 day period to the Plan Administrator. In addition, the member may confer with the Plan Administrator and attempt to negotiate an agreement with alternative terms. The Plan Administrator has the authorization to accept the alternate terms or deny the alternate terms.
- e. If no agreement is reached between the member and the Plan Administrator, the member has the right to request to address the Board of Retirement in an open session meeting to review the matter. The Board may review and the Board's decision will be final.
- f. The member may appeal the Plan Administrator's decision in accordance with the MercedCERA's Appeal Process. As a part of that appeal process, the Plan Administrator and/or the Board may consider an agreement of compromise in accordance with this policy.
- g. At the conclusion of the administrative appeal process, there should be a final administrative decision about the scope of the error and a plan of correction for MercedCERA to implement. Per Judicial review, of the Board's decision shall be subject to Code of Civil Procedure section 1094.6. MercedCERA shall then take all reasonable steps to implement, administer, and enforce the final administrative decision. The Board may meet in closed session to consider whether to initiate

any litigation so that MercedCERA may obtain and execute on a civil judgment.

- h. Any member has a right to appeal to a Judicial Review of the Code of Civil Procedure of the State of California.

## **6. Modified Procedures for Overpaid Persons Not Receiving Ongoing Benefits**

Where MercedCERA has overpaid an individual that is not receiving ongoing benefits, a modified procedure applies.

After staff sends a Notice of Correction pursuant to this policy, staff shall reach out to the individual and attempt to obtain his or her affirmative agreement to the proposed repayment plan. The Plan Administrator and the individual may also negotiate for some alternative repayment plan. If the agreement involves a compromise in the amount owed, the agreement must be reviewed and approved by the Board (depending on whether the total overpayment exceeds \$25,000). Any such agreement must be in writing and fully executed by both parties.

If the parties come to terms on a plan for repayment, MercedCERA shall implement the agreed upon plan. If the individual subsequently breaches the agreement, MercedCERA may, at its discretion, use any available legal remedy to enforce the agreement, including by obtaining a civil judgment against the individual and executing on the judgment.

If the parties cannot come to terms on a plan for repayment, then the administrative appeal process prevails, and MercedCERA may take all reasonable steps to implement, administer, and enforce the final administrative decision, including by obtaining and executing on a civil judgment.

## **7. Contents of Notice of Correction**

The Notice of Correction shall inform members of the following;

- If a member has objections to any aspect of the Notice, they must contact the Plan Administrator by a certain date. Generally, that date should be no less than 90 days after the date of Notice.
- A members may submit an administrative appeal in accordance with the MercedCERA Bylaws and this policy to dispute the proposed correction plan or any aspect of the Notice.
- Inform the member of the amount of the prospective correction, the total amount previously under/overpaid to the member, and the amount of any interest charged or credited.
- The correction shall be made with the next available benefit payment after the 90 days as stated in the Notice.
- Identify the expected duration of the repayment to recover the overpaid amount plus interest.
- In the event of any under-payment of contributions by the member, the Notice shall inform the member that the correction will commence, if practicable, with the next available payroll if the member is in active service or otherwise for deferred members, and that full contribution underpayment amount, plus interest on contributions, will need to be recouped to be entitled to the monthly benefits supported by those contributions.

**8. Reporting Out of Corrections**

The Plan Administrator may, at any time, bring information to the Board in open session on any correction. Any and all information may be presented in aggregate to protect our members identity and rights to privacy.

The Board's Counsel may bring information to the Board in closed session with the threat of litigation.