

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 charged with the responsibility of 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 assets of the System in a prudent manner.

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 member 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 an individual member’s plan 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 the circumstances.
5. In the event of any inconsistency between applicable law (including IRS rules) and these policies and procedures, the law shall govern.

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.

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Interest on the underpaid contributions shall be charged to and paid by the employer at the System's actuarially assumed rate of return.

Members

7. **Active Members.** 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; 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.** 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:
- a. **For Active Members.** Upon discovery of the underpaid contributions, OCERS will notify the member of the prospective adjustment to (increase in) 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:.

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- *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 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. 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.
- b. Only the Board may compromise claims in which the total amount of such underpaid contributions, not including interest, is greater than \$1,000.
- c. The amount of the Plan’s claim for underpaid contributions is the difference between the amounts actually paid by the member for the recovery period and the amounts that should have been paid, together with “appropriate interest” from the dates of the actual payments 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.

Procedures for Overpaid Contributions

Employers

11. When an employer has overpaid contributions to the Plan, the employer shall be entitled to a credit to its actuarial accrued liability in the amount necessary to correct the error, plus interest at System’s actuarial assumed rate of return.

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Members

12. When a member has overpaid contributions to the Plan, (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) retired and deferred members will be entitled to a lump sum payment within 45 days of 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 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.).
 - a. If, after following its standard procedures, 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.

Member Appeal Rights

14. A member shall have the right to appeal any decision regarding corrective actions that the Plan takes with respect to recovering and/or returning over and underpayments of Plan contributions.
15. The appeal process will generally follow the same pattern as benefit appeals as set forth in the Adjudication and Administrative Hearing Rules (Disability and Non-Disability Benefits) Policy. Offsets and other collection efforts will be stayed during the pendency of the appeals 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

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

Policy History

17. This policy was adopted by the Board of Retirement on January 16, 2019.



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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

01/16/19

Date