



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 12

MEETING DATE: March 19, 2025

SUBJECT: Error Correction Policy

SUBMITTED FOR: X Action Information

RECOMMENDATION

Approve amendments to Error Correction Policy.

PURPOSE

This item supports Strategic Management Plan goals regarding transparency, efficiency, and compliance with laws and regulations, and effective oversight of Plan administration.

DISCUSSION

In May 2024, pursuant to SCERS' practice of reviewing and refreshing policies every three years, the Board approved amendments to its Error Correction Policy. The amendments streamlined standards and procedures, updated legal authorities, and clarified steps to be taken by staff in connection with collection and reporting of overpayments.

California Government Code Section 31541.2 was added to the County Employees' Retirement Law of 1937 ("CERL"), effective January 1, 2025. The new law (AB 3025) outlines SCERS' obligations to employers and members in the event SCERS discovers and determines that compensation reported for a member is "disallowed compensation." Because these new obligations directly impact SCERS' error correction standards and procedures, the Error Correction Policy was re-evaluated to consider whether amendments were necessary at this time.

The proposed revisions in Section 3 of the Policy incorporate references to the new law and SCERS' intent to comply therewith when "disallowed compensation" is identified. Additionally, unrelated to the changes to the CERL, staff review also indicated that the collection methods identified in the Policy should be modified to expressly (rather than impliedly) authorize General Counsel to initiate appropriate litigation. The proposed amendment in Section 4 of the Policy clearly delegates the authority to initiate litigation for collection matters from the Board to General Counsel, eliminating the potential need for Board approval for individual matters in that regard.

ATTACHMENTS

- Board Order
- Redlined version of policy with proposed amendments
- Clean version of policy with proposed amendments

Prepared by:

/S/

Jason R. Morrish
General Counsel

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

Before the Board of Retirement
March 19, 2025

AGENDA ITEM:

Error Correction Policy

THE BOARD OF RETIREMENT hereby approves Staff's recommendation to approve amendments to Error Correction Policy.

I HEREBY CERTIFY that the above order was passed and adopted on March 19, 2025 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES:

(Present but not voting)

James Diepenbrock
Board President

Eric Stern
Chief Executive Officer and
Board Secretary



ERROR CORRECTION POLICY

PURPOSE

The purpose of this policy is to establish standards and procedures for resolving errors associated with the payment of member benefits and the collection of member contributions in a manner consistent with the Internal Revenue Service Employee Plans Compliance Resolution System currently contained in Revenue Procedure 2021-30 (“EPCRS”), including any future changes to EPCRS, and relevant state and federal law.

POLICY

Members and beneficiaries have a right to accurate pension benefit calculations and payments. No member or beneficiary has a right to be deprived from receiving or retaining retirement benefits to which they are entitled, nor do they have a right to receive or retain retirement benefits to which they are not entitled. Upon discovery, SCERS shall make all reasonable efforts as soon as practicable to remit or recover all errors in the payment of member benefits or contributions, in a manner consistent with state and federal law and its own policies and procedures.

This policy does not apply to errors, under-collections, over-collections, and other correctable events driven by employer operations, *e.g.*, usual and customary employer reporting adjustments for member contributions, nor does it alter corrections undertaken pursuant to Retirement Board Orders passed and adopted on September 16, 2020 and February 15, 2023 in response to Alameda County Deputy Sheriff’s Assoc.), *et al.* v. Alameda County Employees’ Retirement Assoc., *et al.*, 9 Cal.5th 1020 (2020).

All references to “interest” in this policy refer to the semiannual interest crediting rate for Member Reserves for the period(s) to be corrected.

STANDARDS AND PROCEDURES

1. **Investigation.** SCERS shall thoroughly investigate any errors or omissions upon discovery and promptly undertake appropriate corrective measures to resolve them.
2. **Correction Factors.** The CEO shall have full authority to take the necessary or appropriate corrective measures to resolve errors or omissions, in consideration of the following non-exclusive factors:

- a. State and federal law, including but not limited to, the County Employees Retirement Law of 1937 and Internal Revenue Service guidelines and procedures;
 - b. Fiduciary obligations and prudent administration of fund assets;
 - c. The total amount of the overpayment or underpayment, including interest;
 - d. The verifiable financial circumstances of the affected member or beneficiary;
 - e. The anticipated costs of collection and likelihood of success, e.g., administrative and legal concerns;
 - f. Input from the Plan sponsor/employer; and
 - g. Any intent to defraud, or other culpability or responsibility for the error, attributable to SCERS, the member or beneficiary, the Plan sponsor/employer, or a third party.
3. **Resolutions.** Corrections should endeavor to place SCERS and the member or beneficiary in the position they would have been had the error or omission not occurred and, where feasible, that resolution should result in immediate full payment of the amount at issue, including interest.
- a. With respect to prospective corrections, SCERS shall adjust the amount of the member or beneficiary's benefit to ensure that, going forward, the member or beneficiary receives a benefit that does not exceed what is owed under the law.
 - b. In his or her discretion, the CEO may negotiate a repayment schedule (not to exceed the expected lifetime of the member and recoverable from the beneficiary upon the member's death to the extent consistent with IRS guidance) and may accept less than the full amount at issue on SCERS' behalf ("agreement of compromise"). An agreement of compromise to accept less than the full amount shall follow the dollar limits under the SCERS' CEO Delegated Authority for Expenses Policy.
 - c. Unless ordered to do so by the IRS and/or a final, non-appealable order of a court of competent jurisdiction, the CEO shall also have discretion to forgo collection of any amount pursuant to the factors in Section 2 where there are correction exemptions under state or federal regulations or where there is an error attributable to SCERS that might subject SCERS to valid equitable defenses or potential fiduciary claims by a member or beneficiary.
 - d. Where there has been a system-wide error affecting a significant number of members, SCERS may encounter practical limitations on its

ability to gather the facts necessary to recreate members' final compensation and achieve perfect 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 and IRS correction principles.

- e. In cases where an active or deferred member has overpaid member contributions, SCERS will refund the amount at issue, plus interest. In cases where a retired member has overpaid member contributions, SCERS will refund the amount at issue, plus interest, with an offset necessary to recover overpaid benefits, if any, to the extent allowable under IRS guidance. Notwithstanding the foregoing, in cases of overpayment or underpayment of member contributions to SCERS where the amount at issue is less than \$250, SCERS reserves the right not to issue a refund or pursue recovery as a matter of prudent Plan administration.
- f. In cases of overpayment or underpayment of retired member or beneficiary benefits where the amount at issue is less than \$250 in estimated total lifetime benefits, as determined by the system's actuary, SCERS reserves the right not to pursue a corrective action as a matter of prudent Plan administration.
- g. In cases where SCERS determines that compensation reported by an employer for a member is "disallowed compensation," as that term is defined in the County Employees Retirement Law of 1937 ("CERL"), SCERS will promptly require the employer to discontinue reporting the disallowed compensation and make the appropriate notifications and corrections in compliance with the applicable provisions of the CERL.
- hg. Any collection shortfall arising from the administration of this policy will be reconciled through the Actuarial Accrued Liability as part of the annual actuarial valuation process to the extent it is consistent with EPCRS guidance.

- 4. **Collection Methods.** The CEO shall consult with SCERS' General Counsel as needed with respect to the administration of this policy. SCERS may utilize any collection methods and pursue all legal remedies that, in its judgment, may facilitate a full recovery.
 - a. Collection methods shall be appropriate under state and federal law and may include communications to financial institutions for the recovery of allowance payments deposited after the death of a member or beneficiary.

b. ~~b.~~ SCERS may offset the amount of overpayment to be recovered against future benefit payments. SCERS may also seek recovery by adjusting the allowance so that the retired member (or the retired member and his/her beneficiary to the extent permitted under IRS guidance) will receive the actuarial equivalent of the allowance to which the member is entitled.

c. As legal advisor to the Board, General Counsel is authorized to SCERS may also institute, or cause to be instituted with the assistance of outside counsel or the Sacramento County Department of Revenue Recovery, any appropriate action against the member for declaratory, legal, ~~and~~ equitable relief.

c. When the CEO, in consultation with General Counsel, elects to forego collection of any overpayment to a member or beneficiary, or otherwise determines that an overpayment is uncollectable following investigation and exhaustion of reasonable efforts, the CEO shall notify SCERS' Chief Operations Officer ("COO") in writing. The COO shall track all uncollectable overpayments until Board approval to discharge is received pursuant to Section 7, below.

5. **Notice of Correction.** SCERS shall notify members and beneficiaries of any errors or omissions affecting their contributions or benefits by way of a Notice of Correction ("Notice") to the member containing information about the nature of the error and a proposed plan for the corrections. The Notice shall be sent by SCERS' Chief Benefits Officer ("CBO") via First Class Mail to the member or beneficiary's address of record on file with SCERS and via any other method (e.g., electronic mail) that SCERS reasonably believes will provide adequate notice.

The Notice shall inform the recipient that, if they have objections to any aspect of the Notice, they may appeal the CBO's proposed correction plan in accordance with SCERS' Administrative Appeals Policy ("Appeals Policy"). As part of the appeal process, the CBO, CEO and/or the Board may consider a mutually agreeable resolution with the member or beneficiary pursuant to Section 3, above. In the absence of such a resolution, at the conclusion of the appeal period, the CBO will issue a written Administrative Decision, from which the recipient may seek further review in accordance with the Appeals Policy.

6. **Timeliness.** Although SCERS will strive to commence corrective recovery actions in a timely manner, no limitations period applies to the administrative actions described in the paragraphs above.

7. **Reporting.** The CEO shall annually report to the Board the amount of overpaid benefits and underpaid contributions in collection status. At the same Board meeting, for the same time period, the COO shall present a request to the Board to authorize the discharge of accounts that have been deemed uncollectable pursuant to Section 4(c), above. Benefit overpayments deemed uncollectable should be discharged from SCERS' financial accounting records

as “receivables” in accordance with generally accepted accounting principles. In presenting these items to the Board, to protect the privacy rights of members, the report shall contain aggregate information only.

AUTHORITY

Internal Revenue Service Revenue Procedure 2021-30
California Government Code Sections 31538-31541.24
Krolkowski v. SDCERS, 24 Cal.App.5th 537 (2018 2409)

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
<u>3-19-2025</u>	<u>Board amended policy.</u>
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