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Date: January 19, 2016  
To: Board of Retirement  
From: James Wilbanks, Retirement Administrator and Jeff Berk, Legal Counsel  
Subject: Overpayment Policy

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Attached you will find a DRAFT Overpayment Policy for your consideration. To refresh your memory, an earlier draft of this policy was considered at the Board of Retirement Meeting on December 2, 2015. During that meeting the Board gave direction to Staff and Legal Counsel to make changes to the draft in three areas. Specifically, the Board directed the following changes be made to the draft:

- Clarify that the three year look back in the collection of overpayment amounts is a certain period,
- Clarify that the 3 year look back with no interest recovery does not apply if the member caused the overpayment, and
- Include language to provide for disclosure of uncollected overpayments.

The attached policy addresses this direction from the Board and we recommend the Board adopt the attached policy.

# MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION OVERPAYMENT POLICY

## I. PURPOSE

The purpose of this policy is to establish criteria and a framework for resolving overpayments made to members.

## ~~II.~~ Background

While rare, overpayments to members can be caused in a variety of ways, including death related overpayment, incorrect computation and other miscellaneous causes.

## ~~III.~~ OBJECTIVES

The primary objective is to preserve and protect fund assets and collect contributions in accordance with applicable law. It is intended that corrections be made in accordance with the Internal Revenue Service (IRS) Employer Plans Compliance Resolution Program. If an overpayment has been identified, it should be corrected as soon as possible. When reasonable and appropriate to do so, the overpayment should be recovered as discussed below.

## ~~IV.~~ III. PROCESS FOR RESOLVING OVERPAYMENTS<sup>1</sup>

- A. Staff shall ~~verify the overpayment,~~ notify the member, in writing, of the overpayment and correct that future payments will be corrected with the next available payroll benefit payment. The member should be notified that if they have questions or concerns, they can contact the Administrator and report the correction on the next Retirement Board agenda.
- B. In connection with Section A above, Staff shall initiate collection efforts ~~which shall include the notice setting forth the amount owed, an explanation of the cause of and calculation of the amount owed, and the alternatives for repayment.~~ Consistent with the interpretation of applicable law, staff shall calculate the overpayment amount during the prior three year period. As a matter of policy, interest shall not be included in the calculation.
- C. The procedure for collection of overpayments will be as follows.
  1. If the member agrees to the repayment amount, the member and MCERA will enter into a Payment Agreement, which will be approved by the Retirement Board. ~~For amounts up to the CA Small Claims Court Limit, the Retirement Administrator has discretion, after the completion of reasonable collection efforts, to either commence further efforts such as negotiation or the intent to recommend litigation to the Board, or cease collection efforts. In exercising this discretion, the estimated~~

<sup>1</sup> This process shall not apply for overpayments made as a result of a members' fraudulent report of compensation or of a member taking some action to cause his or her retirement benefit to be improperly increased or overstated. In such situations, MCERA will follow the process outlined in Government Code Section 31539.

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OVERPAYMENT POLICY

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~~cost of further negotiation and/or litigation will be considered against the amount due and any actions taken will be reported to the Board.~~

- ~~2. If the member will not agree to the repayment amount, the Board will meet in closed session to consider whether to initiate litigation. For amounts over the CA Small Claims Court Limit, the Retirement Administrator shall, after reasonable collection efforts as well as negotiations have been completed, seek direction from the Board to either commence litigation or cease collection efforts.~~

**IV. AMOUNTS NOT RECOVERED**

Unrecovered overpayments become part of the Unfunded Actuarial Accrued Liability. To protect the privacy rights of retirees, Staff will report to the Board the aggregate amount of unrecovered overpayments. Such report shall be made annually, except in years where fewer than three (3) Payment Agreements are approved by the Board which result in unrecovered overpayments. In years where fewer than three (3) Payment Agreements are approved by the Board which result in unrecovered overpayments, the unrecovered overpayments resulting from said agreements shall be carried forward and reported during the subsequent annual report.

**V. POLICY REVIEW**

The Board shall review the Overpayment Policy at least every three (3) years to ensure that it remains relevant and appropriate.

**VI. POLICY HISTORY**

The Board adopted this policy on February 15, 2012.

The Board reviewed and revised this policy on March 20, 2013.

The Board reviewed and revised this policy on January 19, 2016.