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Date: December 2, 2015
To: Board of Retirement
From: James Wilbanks, Retirement Administrator
Subject: Overpayment Policy

Attached you will find a DRAFT Overpayment Policy for your consideration. The proposed changes to the policy have been made in accordance with direction given to staff and legal counsel. The draft policy has been reviewed by Mendocino County Employees Retirement Association (MCERA) General Counsel and Tax Counsel, both of which have approved the proposed policy changes.

The proposed changes simplify and clarify the Board's position regarding the collection of overpayment amounts. Further, the proposed changes clearly communicate to MCERA clients and the public how staff will determine overpayment amounts that will be pursued for recovery from MCERA clients. Finally, the policy clarifies that any overpayment amount that is not recovered becomes part of the MCERA unfunded actuarial accrued liability (UAAL).

I recommend the Board adopt the policy amendments as presented.

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 overpayments should be recovered as discussed below.

IV. PROCESS FOR RESOLVING OVERPAYMENTS

A. Staff shall notify the member of ~~verify~~ the overpayment, in writing notify the member and that correct 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, ~~s~~Staff shall initiate collection efforts. Except to the extent provided in Government Code Section 31539. Consistent with the interpretation of applicable law, staff shall calculate the overpayment amount going back no more than three years. As a matter of policy, interest shall not be included in the calculation. In situations involving conduct by a member resulting in improper overpayment of benefits, staff shall present the calculations of the required repayment, including interest, for review by the Board, which shall include the notice setting for the amount owed, an explanation of the cause of and calculation of the amount owed, and the alternatives for repayment.

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 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 amount 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.~~

V. AMOUNTS NOT RECOVERED

Unrecovered overpayments become part of the Unfunded Actuarial Accrued Liability. To the extent consistent with applicable law, Unrecovered unrecovered overpayments will not be disclosed.

VI. POLICY REVIEW

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

VII. 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 December 2, 2015.