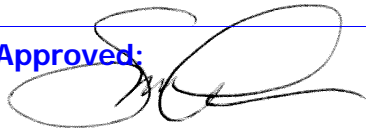




## RETIREMENT BOARD POLICY AND REFERENCE MANUAL

<b>SUBJECT:</b> <b>OVERPAYMENT OR UNDERPAYMENT OF RETIREMENT BENEFITS</b>	<b>Section:</b> <b>2-43</b> <b>Date Adopted/Revised:</b> <b>7/11/2012</b>
<b>SYSTEM(S):</b> <b>JOINT</b>	<b>Approved:</b>  Retirement Administrator

### PURPOSE

The Retirement Boards of the City of Fresno Retirement Systems have a fiduciary obligation to conserve fund assets and protect the integrity of the fund. Accordingly, a fundamental role of the Board is to establish policies guiding critical aspects of the Retirement Boards' operation, including specific procedures and practices after discovery of an overpayment or underpayment of retirement benefits. Therefore, these policies and procedures are designed for use when benefit calculation errors are discovered that affect a retiree or beneficiary's retirement benefit. In the event of any inconsistency between applicable law and these policies and procedures, the law shall take precedence.

### POLICY

It is the policy of CFRS' Board that retirees and beneficiaries have a right to accurate pension benefit payments. No retiree or beneficiary has the right to receive or retain retirement benefit payments that exceed the amounts to which a retiree or beneficiary is entitled, and no retiree or beneficiary should be deprived of any benefit payments that he or she is entitled to receive. When errors are discovered, CFRS will make every reasonable effort to recover the amount of any overpayment of benefits, consistent with FMC Sections 3-323 and 3-528, and to remit to a retiree or beneficiary the amount of any underpayment of benefits as established by the Board in this policy.

### PROCEDURES

#### Overpayment

1. Overpayments of \$50 or less

The Boards believe that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpayments only where the amount overpaid to the retiree or beneficiary is greater than \$50, not including interest. Accordingly, the Retirement Administrator is authorized, if necessary, to not seek recovery of any overpayment where the amount overpaid to the retiree is \$50 or less, not including interest.

2. Overpayments greater than \$50

CFRS shall take all reasonable steps to recover the full amount of all overpayments greater than \$50, not including interest. If the overpayment was due to inaccurate information provided to CFRS by the retiree or beneficiary, appropriate interest shall be CFRS' actuarially assumed rate of return that was applicable during the period in which the overpayments were made, running until such amounts are fully repaid. If the overpayment was the result of an error by CFRS or the City of Fresno, interest shall be waived.

3. Method of Payment

CFRS will recover overpayments either by a lump sum payment from the retiree or beneficiary by offsetting the amount to be recovered against future benefits, over a period of time not to exceed the period in which the overpayment occurred, unless the Board determines that another method of repayment is warranted based on legal or practical considerations. When offsetting against future retirement benefits, payments mandated by statute may take precedence, including but not limited to payments pursuant to tax withholding orders, child support orders, court orders, and domestic relations orders.

4. Authority to Negotiate

The Retirement Administrator shall have authority to negotiate the recovery of overpayments when the amount of the overpayment, not including interest, is \$5,000 or less. The Board shall approve any negotiated recovery in which the amount of overpayment, not including interest, is greater than \$5,000. Negotiated claims may also include a different method of repayment than provided in this policy and/or a partial forgiveness of the amounts overpaid.

When determining whether to negotiate a claim, the Retirement Administrator and/or the Board will consider all relevant information, including but not limited to: the likelihood of collection, the cost of collection, the amount of possible recovery, and hardship to the retiree or beneficiary. In situations where a retiree or beneficiary claims a hardship, the retiree or beneficiary will be required to explain, in detail, the nature of the financial hardship, provide an estimate of their annual income and expenses, provide an estimate of their assets and liabilities, and sign a declaration under penalty of perjury.

In cases where there is evidence that the overpayment resulted from fraud or dishonest conduct by the retiree or beneficiary, the Board reserves all rights to seek all amounts overpaid, plus the maximum amount of appropriate interest (as defined in section 2).

## 5. Overpayment Procedures

- A. Upon discovery of an overpayment, CFRS shall send a letter by certified mail, return receipt requested, to the retiree or beneficiary advising of the overpayment and proposing a repayment schedule, as follows:
- i. The letter will request payment to CFRS of the amount overpaid, subject the provisions of this Policy.
  - ii. The letter will include an Agreement to Repay Excess Benefits Form.
  - iii. The Agreement to Repay Excess Benefits Form will provide three options:
    - o Option 1 - equal offsets against future benefits over the same length of time that the overpayments occurred, with appropriate interest applied during the overpayment period and during the repayment period.
    - o Option 2 - lump sum payment to CFRS for the full amount or a single offset to the retiree or beneficiary's current benefit, with appropriate interest applied during the overpayment period.
    - o Option 3 - reduction of monthly benefit to zero until the overpayment is paid in full, with appropriate interest applied during the overpayment period and during the repayment period.
  - iv. The letter and agreement to Repay Excess Benefits form will provide that Option 3 will go into effect by default if a written response from the retiree or beneficiary is not received within thirty (30) days following the date the letter was post marked. If the amount of the overpayment, not including interest, is \$5,000 or more, CFRS staff will attempt to contact the retiree or beneficiary by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.
- B. CFRS may pursue all legal remedies to collect overpayments, including making a claim on an estate or trust, if appropriate.
- C. CFRS will maintain a permanent record of all amounts of overpayments and the repayment to CFRS of those overpayments.

6. Overpayment – Procedures for a Deceased Retiree or Beneficiary

If a retiree or beneficiary who was overpaid benefits dies prior to repayment, the following procedures will be followed:

A. Retiree or Beneficiary With A Designated Beneficiary

- If the retiree or beneficiary has named a designated beneficiary, the overpayment will be consistent with the procedures outlined in Section 6.

B. Retiree or Beneficiary Without A Designated Beneficiary

- In cases where there is no designated beneficiary and the amount of overpayment is \$50 or less, not including interest, CFRS staff need not take proactive measures as the Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpayments only where the amount overpaid to the retiree or beneficiary is greater than \$50, not including interest. Accordingly, the Retirement Administrator is authorized, if necessary, to not seek recovery of any overpayment where the amount overpaid to the retiree or beneficiary is \$50 or less.
- In cases where there is no designated beneficiary and the amount of overpayment is more than \$50, CFRS staff will refer the matter to the Retirement Administrator and Legal Counsel. The Retirement Administrator and Legal Counsel will determine if there is an open estate, the likelihood of collection and the cost of collection. Following their research and analysis, the Retirement Administrator and Legal Counsel will refer the item to the Board for final consideration.
- CFRS will maintain a permanent record of all outstanding overpayments amounts.

## Underpayments

1. Underpayments

When CFRS has underpaid benefits, the retiree or beneficiary shall be entitled to a prospective adjustment to his or her retirement benefits necessary to correct the underpayment, as well as a lump sum payment for all past underpayments, with interest at CFRS' actuarially assumed rate(s) of return throughout the applicable period of underpayment. Interest shall accrue on each underpayment amount from the date of the underpayment to the date of the lump sum corrective

payment. The payment shall be made as soon as is reasonably practicable following CFRS' discovery of the underpayment.

2. Underpayments – Deceased Retiree or Beneficiary

If a retiree or beneficiary who was underpaid benefits has died prior to payment of the lump sum amount due, the following procedures will be followed:

A. Retiree or Beneficiary With A Designated Beneficiary

- If the retiree or beneficiary has named a designated beneficiary, the payment will be made directly to the designated beneficiary.

B. Retiree or beneficiary Without A Designated Beneficiary

- In cases where there is no designated beneficiary and the amount of underpayment is \$50 or less, not including interest, CFRS staff need not take proactive measures to locate any person(s) responsible entitled to such funds.
- In cases where there is no designated beneficiary and the amount of underpayment is more than \$50, CFRS staff will need to determine if there is an open estate and payment will be made to the estate.
- If final distribution of the estate has already been made, CFRS staff will review the order of final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.
- If an estate was not established, CFRS shall hold the funds on behalf of the deceased retiree or beneficiary.
- CFRS will maintain a permanent record of all outstanding underpayments.