



# L.A. CERA

## POLICY FOR THE RECOVERY OF MEMBER OVERPAYMENTS AND UNDERPAYMENTS

BOARD OF RETIREMENT  
ADOPTED JANUARY 3, 2024

## POLICY FOR THE RECOVERY OF MEMBER OVERPAYMENTS AND UNDERPAYMENTS

**Authorizing Manager: Steven P. Rice, Chief Counsel**

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**Mandatory Review: January 2027**

**Approval Level: Board of Retirement**

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### **I. Purpose**

The Board of Retirement (“Board”) adopts this policy to ensure proper and timely collection of monies owed to LACERA by a member, beneficiary, survivor or other payee resulting from incorrect payments into or out of the retirement system. The Board adopts this policy to safeguard pension-fund assets by making reasonable efforts to recover overpayments, underpayments and appropriate interest thereon.

### **II. Scope**

This policy applies broadly to all cases involving member overpayments and underpayments resulting from incorrect payments into or out of the retirement system. This policy does not apply to or affect the Board’s ability to correct errors in a member account that resulted in the Underpayment or Overpayment in the exercise of its plenary authority to administer the retirement system.

### **III. Legal Authority**

The Board has plenary authority and fiduciary responsibility over administration of the retirement system, which includes the duty to provide benefits, minimize employer contributions, and defray reasonable expenses of administering the system. See Cal. Govt. Code Section 31595. Applicable limitation periods are set forth in Cal. Govt. Code Section 31540.

### **IV. Definitions**

For purposes of this Policy, the following definitions apply:

**“Underpayments”** refer to incorrect member contribution payments into the retirement system.

**“Overpayments”** refer to incorrect benefit payments by LACERA to a member, beneficiary, survivor or other payee.

**“Special project”** refers to multiple individual member accounts that are readily identifiable, affected by a common underlying error or issue, and where handling such cases collectively will maximize efficiency and minimize burden for both LACERA and the affected members.

#### **IV. Definitions (Continued)**

**“Appropriate Interest”** means the lesser of LACERA's:

- (1) then-current actuarially assumed rate of return at the time of calculation, or
- (2) actual rate of return applicable, if known, during the period of the Overpayment or Underpayment or as each may have changed from time to time and as applied to the total recoverable principal amount due at each point during the relevant period.

**“Total Recoverable Principal”** is the lesser of the amount calculated by the CEO as:

- (1) recoverable after applying applicable period(s) of limitation, including, but not limited to, those listed in Section F of this Policy, or
- (2) the actual amount in dispute.

#### **V. Policy**

##### **A. Threshold Limits**

The following threshold limits shall apply to the collection of erroneous payments into and out of the retirement system:

1. For Total Recoverable Principal amounts less than \$750, the Chief Executive Officer (“CEO”) is authorized to waive the demand for principal or interest and write off the amount, or take such other action the CEO deems reasonable and appropriate.
2. For Total Recoverable Principal amounts between \$750 and \$5,000, after informal collection efforts (such as verbal and written staff requests for payment) have been completed and documented, the CEO is authorized to refer the matter to the County of Los Angeles Treasurer Tax Collector, write off the principal and/or interest, in whole or in part, or take such other action as the CEO deems reasonable and appropriate. Formal litigation will normally not be commenced as the cost of filing and prosecuting the case would likely exceed the amount that could be recovered.
3. For Total Recoverable Principal amounts between \$5,001 and \$20,000, after notice to the Board and informal collection efforts (such as verbal and written staff requests for payment) have been completed, documented, and consultation as necessary with the Legal Office and other staff to determine likelihood of recovery, the CEO has discretion to pursue recovery of principal and/or interest in small claims court, refer the matter to the County of Los Angeles Treasurer Tax Collector, commence formal litigation, write off the amount, in whole or in part, or take such other action as the CEO deems reasonable and appropriate.

## V. Policy (Continued)

4. For Total Recoverable Principal amounts over \$20,000, after informal collection efforts (such as verbal and written staff requests for payment) have been completed and consultation with the Legal Office and other staff as necessary to determine likelihood of recovery, the CEO is required to seek Board approval to commence formal litigation to recover the principal and interest, write off the amount, in whole or in part, or to take such other action as the board deems reasonable and appropriate.

Notwithstanding Section E, if the CEO determines that multiple individual cases warrant designation and handling as a “Special Project,” the CEO may treat these cases collectively as a group. In such cases, as soon as practicable after discovery of the error and determination as to the issue and impact, the CEO will present a recommendation to the Board on how such cases will be corrected, processed, and resolved efficiently, prudently, and consistently with LACERA’s fiduciary duties.

## B. Applicable Periods of Limitation

1. Pursuant to California Government Code Section 31540, the applicable periods of limitation for actions to recover erroneous Underpayments and/or Overpayments shall be three years and be applied as follows:
  - a. In cases where LACERA makes an Overpayment to a member or beneficiary, the system’s right to bring an action to collect shall not expire until three (3) years from the date of payment.
  - b. Notwithstanding any other provision in this policy, in cases where LACERA makes an Overpayment because of the death of a retired member or beneficiary, or because of the remarriage of the beneficiary, the system’s right to bring an action to collect shall not expire until ten (10) years from the date of discovery of the erroneous payment.
  - c. Notwithstanding any other provision in this policy, in cases where LACERA makes an Overpayment as a result of fraudulent reports for compensation made by a member for his or her own benefit, the system’s right to bring an action to collect shall not expire until ten (10) years from the date of payment or the date of discovery of the fraudulent reporting, whichever is later.
  - d. Notwithstanding any other provision in this policy, in cases involving an Underpayment, if LACERA brings an action within three (3) years from the date of discovery of the Underpayment, it may recover the entire Underpayment, regardless of when it was made. If no action is brought by LACERA within three (3) years from the date of discovery, LACERA’s right to bring an action shall expire three (3) years from the date of the Underpayment.

## **V. Policy (Continued)**

- e. LACERA's determination as to the period of limitation in any case, shall be conclusive and binding for purposes of correcting any error or omission.
- f. For purposes of this policy, date of discovery means the date LACERA discovered or reasonably should have discovered the error giving rise to the erroneous payment.
- g. Nothing in this policy shall be construed as limiting or prohibiting LACERA's authority to correct, prospectively and/or retroactively, the error(s) in a member account that resulted in the Underpayment or Overpayment.
- h. Notwithstanding any other provision in this policy, in cases where LACERA owes money to a member or beneficiary, the periods of limitation set forth above shall not apply.

### **C. Offsets**

As part of LACERA's collection process, the CEO will whenever possible offset any current or future benefits owing to the member or other payee in order to recover an Overpayment or Underpayment, plus interest owing thereon. The threshold limits in Section E shall apply to cases involving offsets and will only be applied after the member or payee is afforded an opportunity to challenge the debt and offset through the Board's Administrative Appeals Procedures for Retirement Benefits.

### **D. Interest**

The CEO will include appropriate interest on any Overpayment or Underpayment he/she seeks to recover in accordance with the threshold limits set forth in Section E as follows:

1. In cases where there is evidence the Overpayment or Underpayment resulted from fraud or dishonest conduct by the member/payee, the CEO will seek to recover appropriate interest from the member/payee. For purposes of this policy, "fraud or dishonest conduct" means an intentional act or omission the member/payee knew or should have known was false, incorrect or inaccurate.
2. In cases other than those described in Section H.1, appropriate interest shall not be collected from the member/payee.

The calculation methodology is monthly compounding based on the Appropriate Interest rate. Any interest paid and received by LACERA pursuant to this Section will be credited to the member's account as required pursuant to applicable law, including Government Code Section 31591. Any remaining interest will be applied to LACERA's fund as interest income.

Notwithstanding Section H.2., where a member or other payee elects or defaults to repay an Overpayment or Underpayment over time via multiple payments, LACERA will add and collect finance interest at the rate applicable at the beginning of the repayment.

## V. Policy (Continued)

Further, in cases involving contract corrections, LACERA will apply and collect interest on the contract in the amount required pursuant to applicable law or Board regulation.

### E. Delegation of Responsibilities

In all instances, the CEO may delegate to staff the activities and work required to carry out this policy.

### F. Conflicts with applicable law.

To the extent anything in this policy conflicts with IRS rules or applicable law, such IRS rules or applicable law will prevail.

## VI. References

These references are intended to help explain this policy and are not an all-inclusive list of policies, procedures, laws, and requirements. The following information complements and supplements this document:

**Related Policies:** Not Applicable.

**Related Procedures:** Not Applicable.

**Procedure Title:** Not Applicable.

**Related Forms/Templates:** Not Applicable.

**Form/Template Title:** Not Applicable.

**Other Related Information:** Not Applicable.

## VII. Version History

**Policy Issue Date:** Adopted August 2, 1995

**Policy Effective Date:** Revised and Adopted January 3, 2024

**Policy Update/Review Summary:** Previous policy version(s) superseded by this policy/:

- Revised and Adopted June 14, 2007
- Revised and Adopted June 11, 2015

## VIII. Policy Review/Approval

This Policy is a Board Policy subject to Board approval. It should be reviewed every 3-5 years, or more frequently as needed.