

**EMPLOYEES' RETIREMENT SYSTEM
OF THE CITY OF BALTIMORE**

**POLICIES AND PROCEDURES GOVERNING THE OVERPAYMENT
OR UNDERPAYMENT OF RETIREMENT BENEFITS**

Adopted April 15, 2010. Amended July 21, 2011, April 16, 2015, October 18, 2018.

The Board of Trustees of the Employees' Retirement System ("Board") has the duty and responsibility to conserve Employees' and Elected Officials' Retirement Systems ("Retirement Systems") assets and protect the integrity of the Retirement Systems for the benefit of members and beneficiaries.

Members and beneficiaries have a right to accurate pension benefit payments. No member or beneficiary has a right to receive or retain retirement benefit payments that exceed the amount to which he or she is entitled, and no member or beneficiary should be deprived of any benefit payments that he or she is entitled to receive.

It shall be the Retirement Systems' policy to make every reasonable effort to recover from a member, deceased member or beneficiary the amount of any overpayment of benefits, and to remit to a member the amount of any underpayment of benefits, consistent with this policy and any other procedures established by the Board.

It shall be the Retirement Systems' policy to recover any overpayment of benefits to a surviving spouse that remarries.

It shall be the Retirement Systems' policy to recover any overpayment of benefits to: (a) a deceased member's minor child that has attained the age of 18, or (b) a deceased member's child that is a full-time student and has attained the age of 22.

It shall be the Retirement Systems' policy to recover all pension benefits paid to a retiree receiving benefits when there is no break in active service.

It shall be the Retirement Systems' policy to recover any overpayment of benefits to deceased members and beneficiaries.

As to recovery of overpayments to deceased members, beneficiaries, surviving spouses, and minor children, the Retirement Systems believes that considerations of cost effectiveness make it prudent and reasonable to pursue only recovery of benefits for months after the month in which death occurs.

As to recovery of overpayments to a surviving spouse who remarries or a minor child who attains majority, the Retirement Systems believes that considerations of cost effectiveness make it prudent and reasonable to pursue only recovery of benefits for months after the month in which remarriage or attainment of majority occurs.

As to recovery of overpayments to a retired member who resumes employment with the City of Baltimore, it is the policy of the Retirement Systems to seek recovery of benefits for periods on and after the date on which employment with the City of Baltimore resumes.

The Retirement Systems believe that consideration of cost effectiveness make it prudent and reasonable to pursue recovery beyond administrative efforts where the total overpayment is \$500 or more. After administrative efforts to recover an overpayment of less than \$500 have been unsuccessful, the Executive Director shall have authority to determine the overpayment uncollectable if recovery efforts as provided by this Policy have taken place.

To the extent applicable, these Policies and Procedures are intended to comply with all relevant provisions of the Internal Revenue Code, as well as other relevant guidance published by the Internal Revenue Service.

In the event of any inconsistency between Article 22 of the Baltimore City Code and these Policies and Procedures, the law shall take precedence.

1. Overpayments to Deceased Members and Beneficiaries.

A. Administrative Recovery Efforts

i. Refer to and complete Overpayment Recovery Sheet throughout. (See Attachment A)

ii. The status of all overpayment files will be tracked in a master overpayments report, from discovery of the overpayment until repayment in full or writeoff.

iii. Request certified death certificate.

iv. Determine the net and gross amount of overpayment.

v. Identify method of payment: Direct deposit or check.

a. If direct deposit, retrieve bank name, account number and ACH routing number and identify any co-signatory. Obtain BNY Mellon Payment History Report. Request reversal of gross payment.

b. If check, retrieve bank name and the check numbers. Contact BNY Mellon to determine if check(s) has been cashed, deposited, or is outstanding.

I. If check(s) is outstanding, issue stop payment order;

II. If cashed or deposited, request front and back images of checks and identify person endorsing the check;

III. Liquidated checks should be cross-checked with the Accounting list to determine if total overpayment amount can be reduced.

vi. Send condolence letter. (See Attachment B) Identify contact person via:

- a. Information from member's file;
 - b. Informant for Retirement Systems;
 - c. Death certificate;
 - d. Endorsement of checks;
 - e. Estate records; or
 - f. Any other source.
- vii. For Net Amounts Under \$500
- a. Send letter by certified mail return receipt requested and first class mail advising contact person of overpayment and request for refund of net payment. (See Attachment C)
 - b. If a response is received, respond accordingly to make payment arrangements.
 - c. If no response is received, attempt phone contact if possible.
 - d. The Office of Legal Affairs should make one written or telephonic attempt to contact the contact person to request payment.
 - e. The Benefits Manager may propose a writeoff of the overpayment if he or she determines that reasonable administrative efforts have been made, including the above.
 - f. The Executive Director may approve or disapprove the Benefits Manager's proposed writeoff.
- viii. For Net Amounts \$500 or Greater:
- a. Correspondence:
 - I. As soon as possible upon, and no more than 14 days after, an unsuccessful reversal, send initial letter by certified mail return receipt requested and first class mail advising contact person of overpayment and request for refund of net payment. (See Attachment D¹)
 - II. If no response within 14 days, initiate phone contact immediately. Details of phone attempts must be documented, including the date of call, phone number, name, and contents of conversation or voicemail message.

¹ Paragraph 2 will be tailored to each retirement option.

III. After unsuccessful phone attempt and no later than 30 days after the initial letter, send request for payment from Benefits Supervisor (first class mail). (See Attachment E)

b. Refer matter to Legal Affairs upon completion of administrative efforts. Regardless of status of administrative efforts, refer matter to Legal Affairs for review no more than 4 months after the date of death. If administrative efforts procedure is not complete at 4 months after death, coordinate with Legal Affairs to complete administrative efforts. If notice of death is not received until 4 months or more after death, Legal Affairs should be contacted immediately.

c. A writeoff of net overpayments amounts \$500 or greater may be proposed when all administrative and legal efforts have been satisfied.

I. The Benefits Manager and Legal Affairs should first review the file to determine whether there has been any change in circumstances which will allow Retirement Systems to recover the overpayment.

II. The Benefits Manager must certify that all administrative efforts have been made.

III. Legal Affairs must certify that all legal efforts have been made, including referral to Collections Division of the City Law Department, and that any relevant statute of limitations has expired.

IV. Any write-off must be approved by the Executive Director and reported to the Board.

B. Legal Affairs Procedures

i. Negotiation of payment schedule or settlement: Legal Affairs has the authority to pursue and negotiate a settlement offer if it achieves a recovery which otherwise would have been unobtainable or disproportionately difficult/expensive to pursue.

ii. Contact depository bank to request reimbursement and any other information available on account.

iii. Referral to Collections Division of the City Law Department.

a. Cases meeting the following criteria are candidates for referral to the Collections Division:

I. Net overpayment amount is \$500 or greater;

II. The likelihood of recovery is substantial; and

III. The case is within the 3-year statute of limitations, as provided by Maryland law.

b. Send copy of file to Collections Division. Retain original file.

c. If appropriate, the Collections Division may take legal action to collect the net payment.

d. If the net overpayment amount is \$500 or greater but the likelihood of recovery is not substantial or the claim is untimely, Legal Affairs may take any alternative available steps to recover the overpayment amount.

iii. Claim Against a Decedent's Estate.

a. If an estate has been opened, Legal Affairs will file a claim against the estate in the appropriate jurisdiction.

b. Claims must be filed within 6 months of the date of death, as required by Maryland state law.

c. Claims are documented with an affidavit signed by the analyst and a copy of the check or BNY Mellon Payment History Report.

iv. Overpayments Past Statute of Limitations.

a. Where the applicable statute of limitations has expired on legal claim to collect overpayments, the Office of Legal Affairs will make a good faith effort to collect the funds, including at least one written or telephonic attempt to contact the receiving party.

b. Any contact by ERS after the expiration of the applicable statute of limitations will comply with all applicable state and federal laws concerning debt collection.

c. No legal action will be taken where the applicable statute of limitations has expired.

2. Overpayments to Reemployed Members.

A. Within 5 business days of discovery of reemployment, verify reemployment and employment status with the member's agency.

B. Immediately upon verification that the member has returned to work as a regular and permanent employee, the member's benefit payments will be suspended.

C. Calculate the gross and net amount of the overpayment.

D. Within 5 business days of suspension of benefits, notify the member in writing, by certified mail, return receipt requested and first class mail, that his or her

benefits have been suspended and that an overpayment exists. The letter should (See Attachment F):

- i. Briefly outline the facts;
- ii. Inform the member of the exact amount of the net overpayment;
- iii. Describe options for repayment, including, as appropriate, any or all of the following:
 - a. Monthly payment agreement, not to exceed 3 years (or 5 years with approval from the Executive Director), with no interest, except in cases of default; or
 - b. Lump sum repayment of the full amount overpaid with no interest;
- iv. That he or she has 10 business days following the date of the overpayment notification letter to:
 - a. Present written evidence challenging the finding that an overpayment exists;
 - b. Present written evidence challenging the amount of the overpayment; or
 - c. Contact the Retirement Systems to arrange repayment.
- v. Provide that if the member does not respond within 10 business days of the date of the decision letter, the Retirement Systems may immediately pursue legal remedies without further notice to the member.

E. If the Retirement Systems does not receive a response from the member within 15 business days of the date of the decision letter, the Benefits Manager and Legal Affairs will consult on the appropriate course of action. If appropriate, the matter may be referred to Legal Affairs for collection, including, but not limited to, negotiation of a payment agreement with consent judgment or pursuit of other legal remedies. If appropriate, Legal Affairs may refer the matter to the Law Department.

F. Once the member has selected an option for repayment, the file should be referred to Legal Affairs for drafting of the repayment agreement.

G. If the member ceases active employment before a payment agreement has been agreed to and no recalculation of benefits is required, in lieu of the procedure set forth, he or she will be allowed to immediately make a lump sum payment or have his or her benefit reduced pursuant to paragraph 2.I. below. Benefits will immediately resume or, if not yet suspended pursuant to paragraph 2.B. above, continue.

H. If the member ceases active employment but recalculation is required, the member's benefits will be terminated and the member will be required to reapply to return

to retirement status. If the member does not reapply for retirement upon termination of employment, the Retirement Systems will nonetheless treat the member as having reapplied, and the Retirement Systems will reduce the benefit otherwise payable in accordance with paragraph 2.I. below.

I. If attempts to make repayment arrangements and legal efforts to collect are unsuccessful, upon the member's re-retirement, Retirement Systems may reduce the monthly benefit in whole or in part until the overpayment is paid in full, with no interest, not to exceed 3 years (5 years with approval of the Executive Director).

J. If, after suspension of benefits, it is established that suspension of benefits was improper, benefits will immediately resume, including benefits not paid during the period of suspension.

3. Overpayments to Remarried Surviving Spouses and Children of Majority.

A. Within 14 days of discovery of loss of eligibility, notify the beneficiary in writing by certified mail, return receipt requested, and first class mail that an overpayment exists. The letter must advise the beneficiary of the following (See Attachment G):

- i. The reasons for the overpayment;
- ii. The exact amount of the net overpayment;
- iii. That he or she has 10 business days following the date of the overpayment notification letter to:
 - a. Present written evidence challenging the existence or amount of the overpayment; or
 - b. Request a meeting with the Benefits Manager to discuss the matter;
- iv. That if he or she does not respond within 10 business days of the date of the letter, the beneficiary's benefits will be suspended pending a collection arrangement.

The deadline for the beneficiary's challenge to the overpayment is determined by the date of the letter, or if a meeting is requested, the date of the meeting with the Benefits Manager.

B. The Benefits Manager will review the file, including any challenge to the overpayment. Where the Benefits Manager finds that a collectible overpayment exists, Retirement Systems shall immediately suspend benefit payments and send a decision letter to the member within 45 days of the notification letter. The decision letter serves as the first demand letter. (See Attachment H) The decision letter should be sent by certified mail, return receipt requested and first class mail and should:

- i. Briefly outline the facts, issue and reason for the finding;

- ii. Inform the beneficiary of the exact amount owed;
- iii. Describe options for repayment, including, as appropriate, any or all of the following:
 - a. Monthly payment agreement, not to exceed 5 years, with no interest except in cases of default; or
 - b. Lump sum repayment of the full amount overpaid with no interest;
- iv. Provide that if the beneficiary does not respond to the letter within 10 business days of the date of delivery of the decision letter, the Retirement Systems may immediately pursue legal remedies without further notice to the beneficiary.

C. If the Retirement Systems does not receive a response within 10 business days of the date of delivery of the decision letter, the Benefits Manager and Legal Affairs will consult on the appropriate course of action. If referral to Legal Affairs is deemed appropriate, the matter will be referred to Legal Affairs for collection, including, but not limited to, negotiation of a payment agreement with consent judgment or pursuit of other legal remedies. If appropriate, Legal Affairs may refer the matter to the Law Department.

D. Once the beneficiary has selected an option for repayment, the file should be referred to Legal Affairs for drafting of the repayment agreement.

4. Overpayments Due to Calculation Error.

A. Benefits to members and beneficiaries may be overpaid when Retirement Systems has inaccurate information about the member's average final compensation or years of service, or through mathematical error. Retirement Systems staff makes every effort to avoid such miscalculations.

B. Upon discovery of an overpayment due to a calculation error, Retirement Systems staff should determine the amount and cause of the overpayment and for how long the overpayment occurred.

C. Within 14 days of discovery of overpayment, the Benefits Manager should notify the member in writing that an overpayment exists. This demand letter should be sent by certified mail return receipt requested and first class mail. (See Attachment I) The letter must advise the member of the following:

- i. The reasons for the overpayment;
- ii. The amount of time the overpayment occurred;
- iii. The exact amount of the overpayment;
- iv. That he or she has 10 business days following the date of the overpayment notification letter to:

- a. Present written evidence challenging the existence or amount of the overpayment; or
- b. Contact the Benefits Manager to arrange a meeting to discuss the matter or to make payment arrangements;
- v. That the following options for repayment are available:
 - a. Monthly payment agreement, not to exceed 5 years, with no interest except in event of default;
 - b. Lump sum repayment of the full amount overpaid, with no interest; or
 - c. Reduction of monthly benefit amount, for a period reasonably calculated to result in repayment in full, with no interest; or
- vi. The Benefits Manager will consider and respond to any written evidence challenging the existence or amount of the overpayment.
- vii. If the Retirement Systems does not receive a response within 10 business days of the date of the letter, the Benefits Manager, Legal Affairs, and Executive Director will consult on the course of action most likely to result in complete repayment to Retirement Systems without unreasonably burdening the member or beneficiary. The Retirement Systems may immediately suspend benefits until the overpayment is repaid, reduce the monthly benefit amount until the overpayment is repaid, or pursue other legal remedies without further notice to the member.

5. Underpayments.

- A. Determine amount and cause of the underpayment.
- B. The payment should be made in a lump sum within 30 days following Retirement Systems' discovery of the underpayment. If applicable, the member or beneficiary's monthly benefit should be adjusted retrospectively.
 - i. If the Retirement Systems underpaid lump sum distribution of accumulated contributions, interest will be payable only from the time the amount was initially owed through the date of termination of employment, at the rate provided for in Article 22.
 - ii. If otherwise, no interest will be paid.
- C. If an underpaid member or beneficiary has died prior to payment of the amount due, the following procedures will be followed:
 - i. If the member named a beneficiary, the payment will be made directly to the designated beneficiary or legal guardian of the beneficiary.

ii. If the member has no designated beneficiary or if underpayment was to a beneficiary:

a. If there is an open estate, payment will be made to the estate (through the personal representative).

b. If final distribution of the estate has already been made or if there is no estate, Retirement Systems staff will refer the matter to Legal Affairs.