



Memorandum

**TO: Board of Administration,
Federated City Employees'
Retirement System**

FROM: Melanie Kirmse

**SUBJECT: Pensionable Pay Correction Update
For Overpaid Group**

DATE: September 6, 2018

Approved

M. Kirmse

Date

9/6/18

RECOMMENDATION

Discussion and action regarding Pensionable Pay Correction Interest Rate to be charged to the Plan Sponsor (The City) for the overpaid group.

BACKGROUND

The Federated City Employees' Retirement System held open sessions, time-certain discussions at the May, June, and August 2018 Board Meetings related to the Pensionable Pay Corrections. On August 16, 2018, The Board held a final open session, time-certain discussion related to the Corrections. The board heard public input and pleas, made by Retirees, Surviving Spouses, Retiree representatives and Active employee representatives. Legal Counsel gave input on the Board's financial responsibility. The Board made the decision to correct the Overpayments of the on-going monthly benefits of the overpaid members and beneficiaries. The Office of Retirement Services will start paying the correct benefit amount to Retirees and beneficiaries beginning October 2018.

The Board also discussed and decided not to collect any of the past overpaid amounts, or interest, from retirees and other beneficiaries. Instead, the overpayments and "appropriate interest" will be recovered from the plan sponsor (The City) by adding the amount to the unfunded liability.

ANALYSIS

On August 24, 2018, 351 letters were mailed by the Office of Retirement Services notifying the overpaid retirees and beneficiaries of the correction going forward to be effective October 2018. Pension Correction Staff has notified IT Staff of the ongoing changes required in the pension administration system to be made for the October 2018 payroll.

The Board should discuss and decide on the interest rate to add to the repayment of the past cumulative overpayment amount through September 30, 2018 that will formally be billed to the City. The table below shows the interest repayment amounts, using 3% per the Overpayment/Underpayment Policy (attached) and the actuarially assumed rate of return of 6.875%. As a point of reference, the Police and Fire Board used their actuarially assumed rate of return.

Benefit Type	Number of people	Cumulative Overpayment, thru Sep 30, 2018	Interest on Overpayment, at 3% rate	Interest on Overpayment, at 6.875% rate
Member	262	\$1,525,697.41	\$291,430.88	\$801,771.96
Survivors/Continuance	31	\$97,374.41	\$17,456.66	\$47,645.45
Ex-spouse	13	\$15,716.12	\$2,476.30	\$6,641.23
Deceased/Terminated	<u>45</u>	<u>\$154,962.31</u>	<u>\$41,245.89</u>	<u>\$117,642.42</u>
TOTAL	351	\$1,793,750.25	\$352,609.73	\$973,701.06

Melanie Kirmse

Melanie Kirmse
Senior Analyst

Attachment: Policies and Procedures Governing the Overpayment or Underpayment of Retirement Benefits

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

The Board of Administration ("Board") has a fiduciary obligation to the retirement fund to conserve fund assets and protect the integrity of the fund, for the benefit of the members and beneficiaries ("Members") of the San José Federated City Employees Retirement Plan ("Plan").

Members have a right to accurate pension benefit payments. Except as determined by a court of law or this Board pursuant to this policy, no Member has the right to receive or retain retirement benefit payments that exceed the amounts to which a Member is entitled, and no Member should be deprived of any benefit payments that he or she is entitled to receive. Subject to all applicable laws, it shall be the Plan's policy to make every reasonable effort to recover from a Member 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 the procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of benefits, and within a reasonable period of time after written notification to the affected Member, the Plan will either collect a lump sum or installment repayment from the member or it will adjust future benefit payments to the Member to reflect the correct total amount to which the Member is entitled, as indicated below.

This Policy's application of interest will not apply to certain overpayments or underpayments which occur in the ordinary processing of benefits, if in the judgment of the Director the adjustment is due to information being made available to the Department that was not available when the benefit was first calculated, or has changed since the benefit was first calculated.

These policies and procedures are designed for use when calculation and other errors affect an individual member's retirement benefits. In the event of a system-wide error that affects multiple members' benefits, the Board shall be advised and may implement a system-wide correction process that it determines is appropriate under all the circumstances.

In the event of any inconsistency between applicable law and these Policies and Procedures, the law shall take precedence.

Overpayments To Members

1. The Plan shall take all reasonable steps to recover the full amount of all overpayments, with "appropriate interest," subject to the provisions of this policy

and applicable law. If the overpayment was due to inaccurate information provided to the Plan by the member, appropriate interest shall be the Plan's earned rate of return net of fees that was applicable during the period in which the overpayments were made. Staff will use the most recent quarterly returns and pro rate accordingly. During the repayment period the actuarially assumed rate of return will be charged as interest until full repayment. If the overpayment was the result of an error by the Plan or the member's employer, appropriate interest shall be 3% per annum during the period in which the overpayments were made, running until such amounts are fully repaid. If the overpayment was made because the Plan was not informed of a death, the Plan will allow a 3 month grace period from the date of death to notification where no interest will be charged.

2. The Plan will recover overpayments either by a lump sum or installment payments from the Member or by offsetting the amount to be recovered against future benefits, over a period of time as determined by the Board, unless the Board, in its discretion and because of legal or practical considerations, determines that another process is warranted. The member may choose a repayment duration that is shorter than what the Board offers as long as the payments are of equal value.
3. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpayments only where the cumulative total amount overpaid to the Member is \$50 or more. Accordingly, the Director of Retirement Services is authorized to not seek recovery of any overpayments where the total amount overpaid to the Member less than \$50.
4. The Director shall have authority, on the advice of legal counsel, to compromise recovery of overpayments when the total amount of overpayment, not including interest, is \$10,000 or less. Only the Board may compromise claims in which the total amount of overpayment, not including interest, is greater than \$10,000. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the Director and/or the Board when determining whether to compromise a claim. Compromising claims may include a different method of repayment than is otherwise provided by this policy and/or a partial forgiveness of the amounts overpaid.
5. In cases where there is no evidence that the overpayment resulted from the fraud or dishonest conduct by the member, the Plan may choose to only seek recovery of amounts paid to the member for the three years immediately before the error was corrected. Considering all relevant factors (including collection issues and principles of equity), the Board finds that seeking only three years of overpayments under those circumstances constitutes "reasonable steps" to

recover the full amount of the overpayments. In cases where there is evidence that the overpayment resulted from fraud or dishonest conduct by the member, the Board reserves all rights to seek all amounts overpaid, plus the maximum amount of recoverable interest under law. The Board shall determine whether the member engaged in fraud or dishonest conduct based on all of the facts available to it.

6. The Board adopts the following procedures for accomplishing the recovery of overpaid benefits:

A. Upon discovery of an overpayment, the Plan shall send a letter by certified mail, return receipt requested, or by express delivery service, to the Member advising the Member of the overpayment and proposing a repayment schedule, as follows:

- i. The letter will request payment to the Plan of the amount overpaid, subject the provisions of this Policy.
- ii. The letter will include an agreement to repay excess benefits and a consent form for the spouse or beneficiaries, if applicable.
- iii. The agreement to repay excess benefits will provide three options:
 - o Option 1 – equal installments over the same length of time that the overpayments occurred, with appropriate interest (as that phrase is defined in No. 1 above) applied during the overpayment period and during the repayment period.
 - o Option 2 – lump sum payment to the Plan for the full amount overpaid, with appropriate interest (as that phrase is defined in No. 1 above) applied during the overpayment period.
 - o Option 3 – reduction of monthly benefit in equal payments over the same length of time that the overpayments occurred until the overpayment is paid in full, with appropriate interest (as that phrase is defined in No. 1 above) applied during the overpayment period and during the repayment period.
- iv. The letter and agreement to repay excess benefits will provide that Option 3 will go into effect by default if a written response from the Member is not received within 30 days following the date the letter was delivered.

B. If the amount of the overpayment, not including interest, is \$5,000 or more, THE PLAN staff will attempt to contact the Member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.

C. The Plan may pursue all legal remedies to collect overpayments, including making a claim on an estate or trust, if appropriate.

D. The Plan will maintain a permanent record of all amounts of overpayments and the repayment to the Plan of those overpayments.

Underpayments To Members

1. When the Plan has underpaid benefits, the Member 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 the Plan's earned rate of return net of fees throughout the applicable period of underpayment. Staff will use the most recent quarterly returns and pro rate accordingly. 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 the Plan's discovery of the underpayment.

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

A. Member With Designated Beneficiary

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

B. Member Without Designated Beneficiary

- If there is an open estate (i.e., no order for final distribution yet), payment will be made to the estate (through the personal representative).
- If final distribution of the estate has already been made, Plan staff will review the order for 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, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property on file with the Plan. See Prob. Code Section 13101.

- Plan staff shall make reasonable efforts to locate the person(s) entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such person, or by other means of similar intended effect. The letter shall request written confirmation that the person entitled to payment still lives at that address and will accept payment. Upon receipt of such written confirmation, the payment will be mailed to that person at that address.
 - If, after taking the above steps, Plan staff has not been able locate a person entitled to payment, the Plan shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the system's pension reserve fund. If someone later appears to claim the funds, the Board will consider such claims on a case-by-case basis.
 - The Plan will maintain a permanent record of all amounts of outstanding refunds of underpayments and any amounts that have been transferred into the pension reserve fund.
 - In cases where there is no designated beneficiary and the total amount of underpayment is less than \$50, the Plan staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to the Plan, however, will be considered regardless of size.
3. Underpayments of \$5 or less will only be refunded at the request of the member.

Policy History

This policy was adopted by the Board on April 16, 2015. The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate.

Secretary's Certificate

I, Roberto L. Peña, the duly appointed Director of the San José Office of Retirement Services and Secretary to the San José Federated City Employees Retirement Plan, hereby certify the adoption of this Policy.

Dated: April 16, 2015



Roberto L. Peña, Secretary to the Board