

MONTANA PUBLIC EMPLOYEES' RETIREMENT BOARD

TITLE: Correction of Benefit Payment Errors

POLICY NO: BOARD Op 07 EFFECTIVE DATE: April 8, 2021

I. OBJECTIVE

To establish criteria and procedures for resolving benefit overpayment errors to members and beneficiaries in compliance with Internal Revenue Code section 401(a) and IRS correction guidance as set forth in Revenue Procedure ("Rev. Proc.") 2016-51 and amendments thereto. It is the intent of the Montana Public Employees' Retirement Board ("Board") to fulfill its fiduciary duties to properly pay benefits pursuant to plan terms and to safeguard retirement fund assets by making every reasonable effort to correct overpayment errors in a timely manner.

This policy is designed to address substantial errors and does not apply to minor adjustments that occur during the routine administration of the retirement association and are corrected within a reasonable time. For the purposes of this policy, unless otherwise noted, the term "member" includes members of retirement systems administered by the Board and its staff and their beneficiaries and estates.

II. APPLICABILITY

This policy applies to all Board, staff, and contractor operations.

III. POLICY

A. Discovery, Investigation, and Correction: Upon discovery of an overpayment error, Board staff shall conduct an investigation of the error to determine the cause of the error. Board staff shall immediately make necessary changes to the member account in order to correct the error prospectively.

B. Notice to Member: As soon as administratively practical, Board staff shall alert the member of the error and of the corrective action to be taken. The notice should provide an explanation of the error and corrective action to be taken. The notice will also provide information regarding the member's right to appeal and the process for an appeal. Notice via First Class U.S. Mail is sufficient for service of the notice.

C. Extensive Errors: The Board retains the right under this policy to determine appropriate correction of overpayment errors that affect a significant number of members. Correction of these errors shall be consistent with IRS guidelines.

D. Offsets: The IRS has determined that an offset to future benefits is an appropriate means of recovering an overpayment of benefits. (Rev. Proc. 2016-51, § 6.06(3); Rev. Proc. 2016-51, Appendix B, § 2.04). Recovery of overpaid benefits through an offset to future benefits is not an assignment under Montana Code § 19-2-903(5)(b) because the IRS has determined that an overpayment is an error, which can be recouped, including through a reduction in future benefits. Further, Montana Code § 19-2-903(5)(b) specifically permits adjustment of future benefits to recover overpayments. As such, Board staff may offset future benefits as a means to recover overpayments, regardless of the cause.

E. Correction Period: Generally, Board staff will attempt to recover overpaid benefits as quickly as possible. The Board recognizes, however, that immediate recovery of overpaid benefits may cause undue hardship on the affected member. Therefore, the Montana Public Employee Retirement Administration's Executive Director is authorized to approve installment payments over a reasonable repayment period. Examples of reasonable repayment periods include, but are not limited to, the plan fiscal year or the period over which the error occurred, but in no event shall the repayment period exceed the member's actuarially expected life span.

F. Staff Authority: 1) For principal amounts less than \$100, the Executive Director may make no demand for principal or interest and write off the account, or take such other action the Executive Director deems reasonable and appropriate.

2) For principal amounts between \$100 and \$1,000, the Executive Director is authorized, after informal and reasonable collection efforts (such as verbal and written staff requests for payment) have been completed, to write off the amount of the principal and interest, in whole or in part, or take such other action as the Executive Director deems reasonable and appropriate. Formal litigation will normally not be commenced as the costs of filing and prosecuting the case would likely exceed the amount that could be recovered.

3) For principal amounts between \$1,001 and \$10,000 the Executive Director has discretion, after informal and reasonable collection efforts (such as verbal and written staff requests for payment) have been completed and consultation as necessary with the Chief Legal Counsel and other staff to determine likelihood of recovery, to pursue recovery of principal and interest by commencing formal litigation, write off the amount, in whole or in part, or take such other action as the Executive Director deems reasonable and appropriate.

4) For principal amounts over \$10,000, the Executive Director is required, after informal and reasonable collection efforts (such as verbal and written staff requests for payment) have been completed and consultation as necessary with the Chief Legal Counsel and other staff to determine likelihood of recovery, to seek Board approval to commence formal litigation to recover the principal and interest, write off the account, in whole or in part, or to take such other action as the Board deems reasonable and appropriate.

G. Collection Limits: The Board recognizes that a correction of benefits and repayment of overpaid benefits may be a hardship for its members. The IRS requires that the Board make full correction of errors through reasonable means. The monthly amount of offset applied to a member benefit for recovery of overpaid benefits shall be limited to 50% of the member's gross benefit amount but in no event shall the offset be reduced such that the repayment period exceeds the member's actuarially expected life span.

H. Due Process and Appeals: Members shall have the right to appeal any benefit corrections and overpayment recovery determinations made by Board staff.

IV. CROSS REFERENCES

The following laws, rules or policies may contain provisions that apply to this policy. The list should not be considered exhaustive – others may also apply.

19-2-903, MCA.

V. HISTORY

Approved April 8, 2021