

# **City of Ann Arbor Employees' Retirement System**

## **Correction of Errors Policy**

Adopted: February 21, 2019

Revised: November 16, 2023

### **Purpose**

The purpose of this policy is to provide guidelines for the correction of administrative errors resulting in an overpayment or underpayment of benefits and/or contributions to/from a member, retiree and/or beneficiary from the City of Ann Arbor Employees' Retirement System (the "Retirement System"), the City of Ann Arbor 457 Deferred Compensation Plan (the "457 Plan"), and the City of Ann Arbor 401(a) Executive Plan (the "Executive Plan") (collectively, the "Plans").

### **Statement of Intent and Statutory Support**

The Board of Trustees of the City of Ann Arbor Employees' Retirement System ("Board of Trustees") is vested with the authority for the proper administration, management, and operation of the Retirement System, 457 Plan, and Executive Plan, and has a fiduciary obligation to ensure that members and beneficiaries receive only those benefits to which they are entitled under the provisions of the Plans. Section 1:627 of the Retirement System Ordinance addresses the correction of errors in the administration of the Retirement System and states:

If any change or error in the records results in any Member, Dual Retirement Plan Member, Retirant or Beneficiary receiving from the Retirement System more or less than he/she would have been entitled to receive had the records been correct, the Board shall seek to recover such overpayment or underpayment by correcting such errors in payments and as far as practicable shall adjust the future payments so that the actuarial present value of the actual payments is equal to the actuarial value of correct payments.

Section 5.15 of the 457 Plan addresses plan correction as follows:

The Plan Administrator, in conjunction with the Employer and Trustee as appropriate, may undertake such correction of Plan errors as the Plan Administrator deems necessary, including but not limited to correction to maintain the Plan's status as an Eligible 457 Plan. The Plan Administrator under this Section 5.15 also may undertake Plan correction in accordance with any correction program that the Internal Revenue Service makes applicable to 457 plans.

Section 9.15 of the Executive Plan provides for plan correction as follows:

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a) or to correct a fiduciary breach under state or local law. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and Employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS.

Furthermore, the Employer may make corrective contributions pursuant to this Section regardless of whether the Plan otherwise permits such contribution source. In addition, the Plan is authorized to recover benefits from Participants or Beneficiaries that have been improperly distributed.

In accordance with the foregoing the Board acknowledges that in the event of an overpayment or underpayment of retirement benefits or contributions due to an error in the administration of the Retirement System, 457 Plan, and/or Executive Plan, it has a legal and fiduciary obligation to attempt to correct the error and, as far as practicable, to adjust future payments in such a manner so that the actuarial equivalent of the benefit to which the affected member or beneficiary was entitled, is paid.

### **Policy Guidelines**

Upon discovery of overpaid or underpaid retirement benefits or contributions, and after written notification to the affected member, retiree or beneficiary, the Retirement System will correct the error in accordance herewith, and pay to or collect from the member/beneficiary, the amounts to which the member or the Retirement System is entitled in accordance with this Policy and applicable law.

This Policy is designed for use when calculation and other administrative errors affect an individual member's or beneficiary's retirement benefits and/or contributions. In the event of a system-wide error that affects multiple members, retirees, or beneficiaries, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances.

In the event of any inconsistency between this Policy and applicable law (including IRS rules and regulations), the law shall govern.

### **Errors Causing Underpayment of Benefits or Contributions**

When the Retirement System has underpaid the retirement allowance or annuity owed to a retiree or beneficiary, the retiree or beneficiary shall be entitled to an immediate prospective adjustment to his or her monthly retirement allowance or annuity, as necessary to correct the error, as well as a lump sum payment, without interest, for all past amounts owed as a result of the error. The lump sum payment shall be made within forty-five (45) days of discovery of the error and receipt of all information needed to make the correction.

In the event of an underpayment of a retirement allowance or annuity in excess of \$10,000, the Retirement System will send a letter notifying the affected individual of their option to:

1. receive a lump-sum payment, without interest, within ninety (90) days of the date of notification of the underpayment; or
2. payment shall be made via a permanent actuarial adjustment for the life of the retiree or beneficiary, consistent with the form of benefit elected at the time of retirement.

If a member who was underpaid has died prior to payment of the retroactive amounts owed, the lump sum payment will be made according to the Retirement System's standard procedures for paying residual amounts following the death of a member or beneficiary (e.g., to the designated beneficiary, estate, etc.).

In the event of an underpayment of employee contributions to one or more of the Plans,

correction shall be made as soon as administratively possible in accordance with applicable IRS rules and regulations including, without limitation, EPCRS.

### **Errors Causing Overpayment of Benefits or Contributions**

Upon discovery of an error resulting in an overpayment of benefits from the Retirement System, the Retirement System will send a letter by certified mail, or by express delivery service, (to the affected member or beneficiary). Subject to the requirements of this Policy, the letter will provide the following information to the affected retiree or beneficiary:

1. Notice of the total amount of the overpayment;
2. Notice of the prospective adjustment to the individual's monthly retirement allowance and annuity, if any, reflecting the correct amount; and
3. Notice of options for repayment of all overpaid amounts, in accordance with the following:
  - a. where the overpayment occurred as a result of clerical error through no fault of the retiree or beneficiary, repayment shall occur as elected by the retiree or beneficiary via:
    - i. lump-sum payment, without interest, within ninety (90) days of the date of notification of the overpayment;
    - ii. temporary adjustment to the individual's monthly retirement allowance and annuity, without interest, over a period of time not to exceed the length of time during which the overpayment of benefits was made or two (2) years, whichever is greater; or
    - iii. where the total amount of overpayment is \$20,000 or greater, the affected retiree or beneficiary may elect the option of i or ii above; or permanent actuarial adjustment, at the actuarially equivalent rate, to the individual's monthly retirement allowance and annuity so that the actuarial present value of future payments is equal to the actuarial present value of the benefit to which such person was correctly entitled.
  - b. where the overpayment occurred as a result of a clerical error through the fault of the retiree or beneficiary, repayment, shall occur as elected by the retiree or beneficiary via:
    - i. lump-sum payment, without interest, within ninety (90) days of the date of notification of the overpayment; or
    - ii. temporary adjustment to the individual's monthly retirement allowance and annuity, with interest at the actuarially equivalent rate, over a period not to exceed the length of time during which the overpayment of benefits was made or two (2) years, whichever is greater.
  - c. overpayments made as a result of fraud or intentional misrepresentation on the part of the retiree or beneficiary shall result in the suspension of the individual's retirement allowance until full repayment, with interest at the actuarially equivalent rate, is made.

In the event of an overpayment of employee contributions to one or more of the Plans, correction shall be made as soon as administratively possible in accordance with applicable IRS rules and regulations including, without limitation, EPCRS.

Election of the desired repayment option must be made, in writing, within thirty (30) days from the date of notification of the overpayment is made. Failure to elect an available repayment

option within the time allotted will result in the default repayment option via temporary adjustment to the individual's monthly retirement allowance, with interest where applicable, over a period of time not to exceed the length of time during which the overpayment of benefits was made or two (2) years, whichever is greater.

The Retirement System may pursue all legal remedies to collect such overpayments, including, without limitation, making a claim on an individual's estate or trust. Overpayments made as a result of fraud or intentional misrepresentation may result in reporting to and cooperating with law enforcement.

The Board of Trustees, in its sole discretion, reserves the right to amend, modify, supplement, or waive any of the foregoing provisions based upon the particular circumstances in each instance.

### **Appeal Rights**

A retiree or beneficiary shall have the right to appeal any decision regarding corrective actions with respect to the correction of benefit overpayments and underpayments. The appeal process shall be consistent with the provisions of Section 1:635 of the Retirement System Ordinance regarding benefit denials.

### **Review and Modification**

The Administrative Policy Committee ("APC") shall review this Policy at least once every three (3) years to assure its efficacy and relevance. The requirement of periodic review is not intended to limit the Board's ability to modify these rules at any other time it deems appropriate.

### **Effective Date**

This Policy shall take effect immediately following the Board's adoption.