**Memorandum**

**To:** Gary Stone
**From:** Ryan Gronsky, Staff Attorney, Western States Pension Assistance Project
**Date:** 12/05/2013
**Re:** Overpayments in California Public Pension Systems

Gary, you asked for our experiences with recoupment of public-sector benefits. Most California public retirement systems address this issue by statute. This Memorandum places particular emphasis on relevant statutory provisions, with illustrative examples. I am also including a separate chart of “Large Public Pension Entities in California,” for your reference.

 **California Public Employees’ Retirement System (CalPERS)**

CalPERS is the nation’s largest public pension fund. Lexis-Nexis releases an annual publication containing primary CalPERS constitutional provisions, statutes, and regulations[[1]](#footnote-1).

*Overpayments*

California Government Code § 20163 provides the method for making adjustments in the case of overpayments. Section 20163(a) provides in pertinent part that adjustments to correct overpayments may be made by adjusting the allowance so that the retired person and his or her beneficiary (if applicable) will receive the actuarial equivalent of the allowance to which the member is entitled, or by direct cash payments.

*Limitations*

CalPERS’ right to correct errors is limited by California Government Code § 20164. When the error is caused by CalPERS, the right to recover an overpayment “shall expire three years from the date of payment.” Where erroneous payments were caused by a participant’s fraud, the limitation period is 10 years and commences on the later of the date of payment or discovery of fraudulent reporting.

**Example**: Participant received notification in 2012 that her CalPERS benefit would be reduced by $100 per month to recoup salary advances the participant received in 2004 and 2005 from her employer. CalPERS determined the total overpayment was $8,000.00. An appeal was submitted, arguing the salary advances could not be recouped because they were not benefits paid by CalPERS, and alternatively that any possible right to recover expired in 2008. CalPERS agreed it was barred by the three-year limitation period, waived additional recoupment, and reimbursed the participant for previous deductions.

**California State Teachers’ Retirement System (CalSTRS)**

CalSTRS is the largest educator-only pension fund in the world. CalSTRS provides a comprehensive reference book called “Teachers’ Retirement Law” on its website.[[2]](#footnote-2)

*Overpayments*

CalSTRS is authorized by statute to recoup overpaid benefits, subject to certain limitations. Education Code § 24617 limits recoupment to 5 percent “if the overpayment was due to error by the system,” and to 15 percent if the error was caused by “inaccurate information or nonsubmission of information by the recipient” of the benefit. If the overpayment was caused by fraud or intentional misrepresentation, this section does not apply and there is no statutory limit.

*Limitations*

Education Code § 22008 places certain time limits on CalSTRS’ ability to recoup. If the cause was the system’s error, “the system’s right to commence recovery shall expire three years from the date of the incorrect payment was made.” Similar to CalPERS, each erroneous payment creates a new window of time for CalSTRS. This effectively limits CalSTRS to a reach-back period of three years at any given time.

Where the cause was lack of information or inaccurate information regarding a recipient’s eligibility, the limitation period commences upon discovery of the incorrect payment. Under any circumstances, if fraud or intentional misrepresentation caused the overpayment, the three-year limitation period does not begin to run until the system discovers the incorrect payment.

**Example:** Participant entered pay status in 2004. Unbeknownst to him, CalSTRS mistakenly inflated his benefit by including an incorrect value for a variable in his benefit calculation. The mistake is discovered in 2013. CalSTRS determines the accumulated overpayments total $87,000.00, without interest. Because the error was caused by the system, CalSTRS orders an accounting of overpayments during the last 36 months. CalSTRS determines that the participant was overpaid $28,000.00 over the last 36 months, without interest. CalSTRS then reduces the participant’s monthly benefit by 5% until the $28,000.00 is recouped.

**County Employees Retirement Law of 1937 (CERL)**

In general, California county retirement plans are governed by CERL (Government Code §§31450-31898) and by the California Constitution, Article 16, § 17. CERL contains some provisions that apply to every county system, some that apply only when adopted by a given county system, and some that only apply to specified counties (Los Angeles County, in particular, is bound by several section of CERL that do not apply to any other county).

*Overpayments*

Until 2004, CERL did not provide an explicit remedy for county retirement systems to correct for overpayments. Because CERL was silent, county systems had to seek declaratory relief before instituting a correction[[3]](#footnote-3). In 2004, Senate Bill 1206 added § 31539 to CERL to enable collection of overpayments without court action in cases of fraud or misrepresentation by the participant.

That section does not apply when the cause if a mistake or error of the system. CERL § 31539(d) explains:

The rights and remedies provided in this section are in addition to any other rights and remedies any party may have at law or in equity. Nothing in this section shall preclude any party from instituting an action for declaratory or other relief in lieu of proceeding under this section.

The result is that, in most California county retirement systems, recoupment cannot occur absent an agreement between the participant and the system or a valid court order.

*Limitations Period*

In general, CERL only limits actions connected to fraud or misrepresentation, as explained above. In those cases, the limitations period is 10 years from the date of payment or discovery of the fraud or misrepresentation.

In cases of mistake, California Civil Procedure § 338 (d), which imposes a three-year limitation period in cases of mistake, *may* prevent county systems from recouping anything at all. California case law supports allocating the burden to the system to demonstrate it was not negligent in failing to make the discovery of an error within three years and that the system had no actual or presumptive knowledge of facts to put it on inquiry[[4]](#footnote-4). And, where the system possessed at all times the information which would have revealed the mistake, courts may deem the system to have had actual notice of the error.[[5]](#footnote-5)

**Example 1:** Participant began receiving retirement benefits in 2007 from a county system governed by CERL. When the participant’s benefit was calculated, the system failed to apply a certain section of CERL, which caps a participant’s maximum benefit in certain circumstances. In 2012, the system noticed that it failed to follow CERL, and notified the participant of the error and reduced the participant’s benefit to the correct amount under CERL. The system further notified the participant that he was overpaid $13,000.00 since 2007, that the system was required to charge interest, and that the system would automatically begin recouping on a 48-month repayment schedule. The system was informed that it lacked authority to recoup without a court order or an agreement, lacked the authority to charge interest, and may not prevail in court due to the nature of the error. The system agreed to waive interest, and to a repayment schedule determined by the participant.

**Example 2**: Participant of a county retirement system was notified of an overpayment, and that court action would be sought absent an agreement to repay. The participant did not deny the overpayment. The system agreed to waive interest and recoup the overpayment at a rate based on the participant’s life expectancy.

1. http://www.calpers.ca.gov/index.jsp?bc=/about/leg-reg-statutes/ca-public-employees-ret-law.xml [↑](#footnote-ref-1)
2. <http://www.calstrs.com/information-about-calstrs> [↑](#footnote-ref-2)
3. http://leginfo.ca.gov/pub/03-04/bill/sen/sb\_1201-1250/sb\_1206\_cfa\_20040702\_113737\_sen\_comm.html [↑](#footnote-ref-3)
4. *See* *Vertex Inv. Co. v. Schwabacher*, (1943) 57 Cal.App.2d 406, 415; *Sun N’ Sand, Inc. v. United California Bank* (1978) 21 Cal.3d 671, 701 [↑](#footnote-ref-4)
5. *Edgar Rice Burrough Inc. v. Commodore Productions & Artists Inc* (1959)*,* 167 Cal.App 2d 463, 475 [↑](#footnote-ref-5)