



Board of Administration

Agenda Item 9c3

November 18, 2020

Item Name: State Legislative Proposal: Collection on Overpayments – Deduction from Warrants

Program: Legislation

Item Type: Action

Recommendation

Sponsor legislation to allow the California Public Employees' Retirement System (CalPERS) to collect any overpayment made to or on the behalf of any member, former member, or beneficiary from any future CalPERS benefit payment that may be payable.

Executive Summary

This proposal seeks authority to apply any future benefit payable made to or on the behalf of any member, former member, or beneficiary toward any overpayment. Using a combination of existing code sections, CalPERS team members currently have authority to collect overpayments from future payments. However, the Public Employees' Retirement Law (PERL) does not contain a single explicit authorization. The proposed bill language, which would clarify CalPERS' authority, is in Attachment 1.

Strategic Plan

This proposal supports the 2017-22 CalPERS Strategic Plan to simplify programs to improve service, streamline operations to gain efficiencies, improve productivity, and reduce complexity across the enterprise.

Background

CalPERS has a fiduciary responsibility to provide benefits to members, retired members, and their survivors and beneficiaries, and defray reasonable expenses of administering this system. In addition, CalPERS is obligated to correct errors and collect overpayments. At the time of a benefit recipient's death, there may be existing overpayment balances due, a benefit adjustment may be processed after death, causing an overpayment, or there could be an overpayment resulting from payments issued after the death of the benefit recipient.

In most cases involving the death of a member or beneficiary, there is a death or survivor benefit that will be paid and when it is able, CalPERS generally offsets overpayments against

these payable benefits. Before such an offset, CalPERS makes a good faith effort to locate the liable party (i.e., the person who received the resulting overpayment due to the untimely notice of the retiree's death) and will offset any benefits owing to that person first. In many cases, however, there is no liable party or the costs associated with locating this individual or litigating the matter make it not cost-effective to pursue. Further, the often-lengthy process of finding a liable party may create a significant delay in payment of survivor benefits to other beneficiaries. This proposal would reduce costs and streamline CalPERS' collection and payment efforts by allowing an offset against any payable benefit, even where there is no liable party or the overpayment cannot be collected from the liable party.

Analysis

Proposal Summary

This proposal would provide explicit authority for CalPERS team members to collect overpayments more efficiently and effectively. Specifically, the proposal states, "Any overpayment made to or on behalf of any member, retired member, or beneficiary, including but not limited to contributions, interest, retirement allowance, payments of any kind, or federal or state tax, shall be deducted from any subsequent payment or benefit that is payable by this system."

While existing provisions of the PERL provide CalPERS team members authority to collect overpayments through future payments, the lack of a single explicit authorizing code section creates potential uncertainty and exposes the organization to unnecessary litigation costs to defend a legal challenge.

Modeled After Education Code Provision

This proposal is modeled after the statutory authority, enacted in 1976, provided to the California State Teachers' Retirement System (CalSTRS) in Education Code section 24616. The intent of this proposal is to track CalSTRS' authority to the extent possible.

Budget and Fiscal Impacts

Fiscal Impact

Allowing CalPERS to collect any overpayment made to, or on the behalf of, a benefit recipient from any future CalPERS benefits that may be payable will, in the future, reduce the amount of financial losses attributable to deceased members' overpayment receivables.

Administrative Impact

The resources used to pursue collection of the overpayment and process overpayment write-offs will be reduced. System changes may be required to process payment of benefits, apply the payment to the overpayment, and report the income to the tax authorities.

Benefits and Risks

Benefits:

- Reduces the amount of resources needed to pursue collection of the overpayment.
- Reduces the amount of resources needed to process overpayment write-offs.
- Increases timeliness of survivor benefit payments.

Risks:

- None identified.

Attachments

Attachment 1 – Proposed Bill Language

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