WEST VIRGINIA CODE: §20-18-9

§20-18-9. Correction of errors; underpayments; overpayments.

(a) *General rule*. — Upon learning of errors, the board shall correct errors in the retirement plan in a timely manner whether the individual, division or board was at fault for the error with the intent of placing the affected individual, division and board in the position each would have been in had the error not occurred.

(b) *Underpayments to the plan*. — Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the division remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error is the responsibility of the division. The division may remit total payment and the employee reimburse the division through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the plan will result in the plan paying a retirant an additional amount, this additional payment may be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the plan by the division*. — When mistaken or excess employer contributions or other employer overpayments have been made to the plan, the board shall credit the division with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the plan. If the division has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the division. Earnings or interest may not be returned, offset or credited to the division under any of the means used by the board for returning employer overpayments made to the plan.

(d) *Overpayments to the plan by an employee*. — When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board has sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq*. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, the board may require the division to pay the individual the amounts as wages, with the board crediting the division with a corresponding amount to offset against its future contributions to the plan. If the division has no future liability for employer contributions to the plan, the board shall refund said amount directly to the division: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means

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used by the board for returning employee overpayments.

(e) *Overpayments from the plan*. — If any error results in any member, retirant, beneficiary, the division or other individual receiving from the system more than he or she would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, the division or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) *Underpayments from the plan*. — If any error results in any member, retirant, beneficiary, the division or other individual receiving from the plan less than he or she would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the plan pursuant to this subsection.

(g) *Eligibility errors*. — If the board finds that an individual is not eligible to participate, the board shall notify the individual and the division of the determination and terminate his or her participation in the plan. Any erroneous payments to the retirement system shall be returned to the division and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and the division of the determination, and the individual shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

(h) *Correction of errors occurring prior to transfer from Public Employee Retirement System*. — If any errors requiring correction occurred prior to establishment of the plan created pursuant to this article or prior to the transfer of funds from the Public Employee

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Retirement System, into the plan, or both, the employer and member contributions, if any, required to be calculated in order to effect correction shall be based on the rates in effect for the retirement system under which such employer or member contributions would have been made had the error not occurred. For purposes of this subsection, "retirement system" means either the Public Employees Retirement System or the plan. The board shall have full discretion when applying this subsection (h), consistent with the general principles of subsection (a) of this section. The intent of any correction is to place the affected individual, division and board in the position in which each would have been had the error not occurred.

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