

**Pension Recoupment and Hardship Policies – Revisions approved at August 15, 2015 NHRS Board meeting.**

**I. Purpose and Intent.**

The purpose of this Policy is to establish guidelines for recoupment of benefit overpayments.

**II. Policy**

**A. General Considerations.** Overpayments under RSA 100-A occur for several reasons, including, but not limited to, the following:

- Payment of an incorrect amount for monthly pension benefits, one-time lump-sum payments or return of contributions;
- Payment of monthly pension benefits for a period during which a retiree was receiving worker's compensation;
- Payment of monthly pension benefits after the death of a retiree;
- Payment of monthly pension benefits after the death or remarriage of a surviving spouse or other beneficiary;
- Payment of monthly pension benefits and medical subsidy payments during a period for which a retiree is restored to service pursuant to RSA 100-A:7; and
- Overpaid medical subsidy payments to third party administrators and former employers on behalf of beneficiaries.

NHRS is authorized to seek recoupment of overpayments under RSA 100-A and general fiduciary trust law principles. The Board's authority to make determinations regarding recoupments and grant Financial Hardship considerations is delegated to the Benefits Committee. NHRS Staff shall develop procedures for administering the policy. The Benefits Committee shall have the discretion to adjust all or any portion of any overpayment. NHRS Staff shall have the discretion to adjust all or any portion of overpayments less than \$5,000. In each such case, adjustments can be granted based on consideration of the following principles of general trust law and equity:

1. When did NHRS know, or should have known upon reasonable inquiry, that an overpayment had occurred?
2. When did NHRS learn of facts sufficient to serve as constructive or actual notice that an overpayment had been made?
3. How much time has elapsed since the overpayment was made?

4. The amount of the overpayment?
5. The cause of the overpayment and whether a plan fiduciary or NHRS Staff was in error?
6. Whether the recipient of the overpayment is still an annuitant?
7. What disposition has been made by the recipient of the overpayment?
8. Whether recoupment of the overpayment would create a Financial Hardship?
9. Whether it is reasonable to conclude that recoupment efforts would be successful or administratively feasible?

#### **B. Method of Recoupment.**

1. Overpayment of Monthly Pension Benefits. Overpayments of monthly pension benefits shall, in the discretion of the Benefits Committee, be recouped in one of the following manners:
  - a) A lump sum payment of the full amount of overpayment, or
  - b) An offset of no less than 50% of the amount of the monthly pension benefit overpaid over a period no longer than twice as long as the period over which the overpayment occurred.
  - c) In the event of a Financial Hardship, an alternative payment plan may be negotiated and agreed to in accordance with the Financial Hardship Policy in Section E. below.
  - d) In the event recoupment is made pursuant to b) or c) above, the amount repaid shall include interest calculated at the actuarial assumed rate of return in effect as of the commencement of the repayment term.
2. Overpayments of Medical Subsidy. Overpayments of medical subsidy payments shall be recouped by offsetting future medical subsidy payments made to the third party administrator or former employer to whom the overpayments were made.
3. Other Overpayments. All other overpayments shall be recouped by a lump sum payment of the full amount of the overpayment.

#### **C. Death of Retiree with Joint Survivorship Benefit or Remarriage of Surviving Spouse.** The following rules apply if overpayments are to be recouped following the

death of the retiree if there is a joint survivor benefit payable or the remarriage of a surviving spouse receiving a 50% automatic survivor benefit under RSA 100-A:12,I.

1. No Offset Recoupment in Place at Death of the Retiree. If (a) the overpayment is not discovered until after the death of the retiree, (b) an overpayment was discovered prior to death of the retiree but recoupment had not commenced prior to the death of the retiree, or (c) the overpayment occurs after the death of the retiree, then recoupment can be made in either of methods enumerated in Section B. 1. above. Any determination to recoup by means of an offset shall be executed by offsetting the monthly joint survivorship benefit.
2. Offset Recoupment in Place at Death. If a recoupment offset has commenced prior to the death of the retiree, the offset shall continue to be taken against the monthly joint survivorship benefit.
3. Reduction of Offset. In the case of both 1 and 2 above, and in the case where the 50% automatic survival benefit is terminated due to the remarriage of the surviving spouse, the Benefits Committee may, in its sole discretion, reduce the monthly amount of any offset as required by Section B.1.b above to 50% of the amount of the joint survivorship benefit payable (or such greater percentage as the Benefits Committee determines appropriate) if such joint survivorship benefit is less than 100% of the monthly amount overpaid upon which the recoupment amount was based. Such reduced offset shall continue for a period of time sufficient to recoup all of the overpayment.

**D. Death of Retiree and No Survivorship Benefit or Death of Surviving Beneficiary.** In cases where either (a) overpayments have not been fully recouped upon the death of a retiree and there is no joint survivorship benefit payable, (b) overpayments have not been fully recouped prior to the death of a surviving beneficiary or (c) overpayments are made after the death of a surviving beneficiary, NHRS Staff shall take all reasonable steps to recoup the remaining overpayment including, but not limited to:

1. Contacting the bank of record immediately to stop payment and/or reverse the direct deposit of any monthly benefit payments made after the death of the member or beneficiary.
2. Contacting the deceased member's or deceased beneficiary's next of kin to (a) request the return of any monthly benefit payments made after the death of the member or beneficiary; (b) request repayment of any outstanding overpayment; (c) determine if the estate of the deceased member or beneficiary will be probated; and (d) determine if there are any trusts holding the assets of the deceased member or beneficiary which provide that such assets may be used to pay any outstanding debts of the deceased member or deceased beneficiary.
3. Contacting the probate court to determine if any probate filings have been made with respect to the estate of the deceased member or deceased beneficiary.

4. Making a demand for repayment to the executor or personal representative of the estate of the deceased member or deceased beneficiary for payment and/or filing a claim against the estate in probate court.
5. Making a demand on the trustee of any trusts holding the assets of the deceased member or deceased beneficiary which provide that such assets may be used to pay any outstanding debt of the deceased member or deceased beneficiary.
6. Initiating legal proceedings in a court of competent jurisdiction.
7. Offsetting any excess accumulated contributions that are payable pursuant to RSA 100-A:11, I(d) or RSA 100-A:11, II(e).

**E. Financial Hardship Policy.** In instances of overpayment in which a member, beneficiary, or other legally responsible party (each, an “Obligor”) claims that repayment would create a Financial Hardship, the Benefits Committee shall have the discretion to adjust the amount to be recouped and/or the method of recoupment to mitigate the hardship for so long as such hardship continues. Any Obligor requesting Financial Hardship consideration shall provide detailed financial information for review by NHRS Staff including, but not be limited to, tax returns, bank statements and a financial affidavit. Such information will be reviewed by NHRS Staff which shall recommended action to the Benefits Committee. In the case of overpayments of medical subsidy payments, Financial Hardship consideration may be granted only if the third party administrator or the former employer indicates that it intends to make a demand for payment on the Obligor of the amount recouped, or to be recouped, from the third party administrator or the former employer under Section B.2. above.

If the Benefits Committee grants consideration based on Financial Hardship, other than a waiver of the full amount to be recouped, NHRS staff shall enter into a settlement agreement with the Obligor providing that the Obligor is required to:

1. Acknowledge the obligation to repay the overpayment amount with applicable interest;
2. Provide updated financial information periodically to determine whether the Obligor’s financial status has changed such as to warrant a change in the amount or method of recoupment.
3. Immediately notify NHRS of any material change in the Obligor’s financial status.

The Benefits Committee may require the Obligor to execute mortgages and/or security agreements that provide NHRS with an enforceable security interest in any real estate or tangible personal property owned by the Obligor with the understanding that such security interest shall be released by NHRS upon repayment in full of the recoupment amount and accrued interest. In the event that such real or tangible personal property is jointly owned by the Obligor and a third party, or is owned by an entity (such as a

corporation, limited liability company or partnership) which is owned or controlled by the Obligor, then the Obligor shall cause such joint owner, or the officer, manager or general partner of such entity, to execute any mortgage or security agreement required under this provision.