

## **SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM**

### **PENSION ENHANCEMENT REVIEW POLICY**

#### **I. PURPOSE**

Pursuant to the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), the SBCERS Board of Retirement (the "Board") is required to establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's benefit. (Government Code Section 31542, effective January 1, 2013 ("Section 31542").) In keeping with this requirement, the Board has adopted the following procedures.

#### **II. OBJECTIVES**

1. To provide staff with direction with respect to the standards and procedures to be employed in reviewing items of compensation pursuant to Section 31542.
2. To provide members and employers with information as to the review and hearing process to be utilized by the Board in making final determinations mandated by Section 31542.

#### **III. AUTHORITY**

Section 31542 provides as follows:

- a. The board shall establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit. If the board determines that compensation was paid to enhance a member's benefit, the member or the employer may present evidence that the compensation was not paid for that purpose. Upon receipt of sufficient evidence to the contrary, a board may reverse its determination that compensation was paid to enhance a member's retirement benefits.
- b. Upon a final determination by the board that compensation was paid to enhance a member's retirement benefit, the board shall provide notice of that determination to the member and employer. The member or employer may obtain judicial review of the board's action by filing a petition for writ of mandate within 30 days of the mailing of that notice.
- c. Compensation that a member was entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or otherwise modified as a result of a negotiated amendment of that agreement shall be considered

compensation earnable and shall not be deemed to have been paid to enhance a member's retirement benefit.

#### **IV. POLICY**

The following policies and procedures shall apply to the assessment and determination of whether an element of compensation was paid to enhance a member's retirement benefit.

##### **1. STAFF REVIEW AND ASSESSMENT**

With respect to all retirement applications, the Board directs SBCERS staff to review all compensation included within the calculation of the member's final compensation within the meaning of California Government Code Sections 7522.32, 7522.34, 31461, 31462, 31462.1, 31462.11 and 31462.2, as applicable, for the purpose of making an initial assessment as to whether any item of compensation included in final compensation was paid to enhance a member's retirement benefit. In conducting such review and making such initial assessment, staff shall consider:

- A. Whether the item of compensation was earned within the period during which final compensation is to be calculated;
- B. Whether the compensation exceeds a members' normal base pay, as calculated by multiplying the member's hourly rate of pay by his or her authorized hours and, if so, whether earnings codes reported for additional pay are consistent with categories of compensation properly included in pension calculation pursuant to statute and Board determination;
- C. Any other factors that cause staff to believe that an item of compensation included in final compensation was paid to enhance a member's retirement benefit, for example inclusion for the first time of a new rate or category of pay shortly before or during the final average salary period.; and
- D. Information and explanation provided by the member and the employer in response to SBCERS' request as to facts and circumstances concerning an item of compensation that staff believes may have been paid to enhance the member's retirement benefit.

A member and the employer shall be given no less than 15 days to respond to such a written request. Staff may conduct such written and oral follow-up communication as staff believes is appropriate in the exercise of reasonable diligence.

If the payment of the member's benefit would be delayed by seeking resolution through the administrative processes set forth below, SBCERS may process the benefit excluding the compensation in question. If it is later determined that compensation should be included, SBCERS will adjust the benefit retroactive to the effective retirement date.

If the member accepts Staff's determination regarding the calculation of his or her retirement benefit, the matter will be deemed concluded. If the member contests such determination, the matter will be presented to the Board pursuant to step 2 below.

2. PREPARATION OF WRITTEN ADMINISTRATIVE RECOMMENDATION, BOARD ACTION

- A. If, after conducting the initial assessment described above, SBCERS staff believes that an item of compensation was paid to enhance a member's retirement benefit, and the member contests such determination, staff shall prepare a written report to the Board making an administrative recommendation to the Board that such item not be included in the calculation of the member's retirement benefit. The report shall contain a description of the reasons for staff's recommendation, including the specific facts and circumstances supporting staff's recommendation, and a copy of the report shall be provided to the member and the employer no later than 10 days before the recommendation is presented to the Board for action.
- B. The report shall be noticed and placed on the agenda for action at a regular meeting of the Board, at which time the Board will act upon staff's administrative recommendation. Before the Board acts, the member and the employer shall be provided the opportunity to be heard by the Board.
- C. Once the Board has considered the matter, it shall take action which may include the following: (i) adopt the administrative recommendation, in its entirety or in part, with or without providing the member or the employee the option of requesting an evidentiary hearing; (ii) reject the administrative recommendation and provide direction to staff regarding calculation of the member's benefit; (iii) refer the matter back to staff for further investigation and recommendation; or (iv) refer the matter to hearing pursuant to the procedures specified in Section 3.

3. EVIDENTIARY HEARING

- A. Matters will be referred to administrative hearing before a referee appointed by SBCERS pursuant to Government Code Section 31533 pursuant to this paragraph where the Board has referred the matter to

hearing as provided for in Section 2(c)(iv), or where a hearing is provided at the request of the member or the employer pursuant to sub-section B below.

- B. If the Board accepts staff's recommendation that one or more items of compensation received by the member should not be included within his or her compensation for purposes of calculation of a pension benefit, and where the Board finds that such determination involves a genuine dispute as to an issue of material fact, the member and the employer shall be given written notice that they may request an evidentiary hearing before a referee to be appointed by SBCERS pursuant to Government Code Section 31533. A written request for hearing must be submitted by the member within 21 days after mailing of the notice.
- C. When a matter is referred to hearing by the Board, or where a hearing is requested by the member or the employer, , a referee shall be selected to hear the matter pursuant to the Board's Guidelines for Retention and Assignment of Referees applicable to disability retirement hearings and the hearing shall be conducted pursuant to the Disability Retirement Procedures, Section 521..

#### 4. FINAL BOARD ACTION

- A. Following submittal of a referee's written report, the Board shall hear and make a final decision regarding the matter consistent with the procedures set forth in Government Code Section 31534 and the Board's Disability Retirement Procedures, Sections 513 and 514 at its next regularly scheduled meeting. Where a hearing is not conducted, the Board shall consider and adopt findings of fact, conclusions of law and a decision at the next regularly scheduled meeting following its initial action pursuant to Section 2, which in such cases shall constitute the Board's final decision.
- B. SBCERS will provide the member and the employer written notice of the Board's final decision within 5 days of the hearing adopting it, which notice will inform the member and the employer of their right to seek judicial review, pursuant to the time limits set forth in Section 31542(b), within 30 days after the mailing of the notice.
- C. If the Board's final decision finds that an item of compensation should be included in the calculation of retirement benefits, which was not initially included by staff, staff shall adjust the member's benefit to include said item, retroactive to the effective date of retirement.

**V. PROCESS REVIEW**

The Retirement Board shall review this Policy at least every three years to ensure that it remains relevant and appropriate.

**VI. AMENDMENT HISTORY**

This Process was adopted by the Retirement Board on March 27, 2013, revised on April 27, 2016 and revised on April 24, 2019.