

ASSESSMENT AND DETERMINATION OF COMPENSATION ENHANCEMENTS

I. PURPOSE

This policy establishes a procedure for assessing and determining whether an element of compensation was paid to enhance a SCERA member's benefit, pursuant to Government Code Section 31542.^{1/} This procedure is to be used in conjunction with the SCERA Administrative Hearing Rules when a member requests a hearing before a neutral referee. This procedure and the Administrative Hearing Rules and Procedures seek to protect the member's and the member's employer's right to receive notice and opportunity to be heard and present the member's and/or member's employer's case.

II. STAFF REVIEW, ASSESSMENT AND DETERMINATION

With respect to payroll transmittals after January 1, 2013 and retirement applications with an effective date of retirement on or after January 1, 2013, the Board authorizes SCERA staff to review compensation included within the calculation of a 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.

When reviewing items of compensation, SCERA staff will audit pay items to identify those that may have a primary purpose to enhance retirement benefits (e.g. conversion of pay items from in-kind to cash payment in the FAS period), involve the manipulation of compensation by SCERA members or employers to enhance benefits, receipt of ad hoc payments or any other compensation considered to be inconsistent with the pension reform legislation provisions.

In conducting such review and making such initial assessment, staff shall consider:

^{1/}Government Code Section 31542 provides:

- (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 final determination by the board that compensation was paid to enhance a member's retirement benefit, the board shall provide notification 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 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.

- A. Whether the item of compensation was earned within the period during which final compensation is to be calculated;
- B. Whether the pay codes reported are retirement compensable;
- 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; and
- D. Information and explanation provided by the member and/or employer in response to SCERA's request as to the facts and circumstances concerning an item of compensation that staff believes may have been paid to enhance the member's retirement benefit.

Staff may conduct such written and oral follow-up communication as staff believes is appropriate in the exercise of reasonable diligence.

If after conducting the initial assessment described above, SCERA staff believes that an item of compensation was paid to enhance a member's retirement benefit, SCERA staff will notify the member and the member's employer in writing of the staff determination and of the member's and/or the employer's option to have that determination reconsidered by the Retirement Chief Executive Officer, as set forth below.

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

III. BENEFIT APPEALS PROCESS

- A. If the member and/or the member's employer disagrees with a Benefit determination by the staff, the member and/or the member's employer may file a first level appeal with the Retirement CEO. The first level appeal must be in writing and must arrive at the SCERA office no later than thirty (30) days after the initial determination by Member Services staff.
- B. Upon receipt of the first level appeal, the Retirement CEO will provide a written response to the member and/or the member's employer addressing the Assessment and Determination of Compensation Enhancement issue raised by the member and/or the member's employer. The response may include a synopsis of the member and/or employer's request and staff's response, citation to any authority relied upon by the Retirement CEO in making his or her determination, and the determination itself, as well as instructions regarding how the member and/or the member's employer can appeal the determination to the Board.

- C. If the member and/or the member's employer disagrees with the determination of the Retirement CEO, the member and/or employer may file a second level appeal to the Board. The second level appeal must be in writing and must arrive at the SCERA office no later than sixty (60) days after the determination by the Retirement CEO is mailed to the member and the member's employer.
- D. The Board will take action on the member's and/or the member's employer's request only at a duly-noticed meeting where the matter has been properly placed on a regular Board meeting agenda. The member or the member's attorney, if any, or the member's employer will be given notice of the date and approximate time the Board will consider the member's or employer's request and will be given the opportunity to be heard by the Board.
- E. After the Board takes action, the member and the member's employer will be notified in writing of the Board's decision and the member's and/or employer's right to have the matter heard by an administrative hearing officer if the member and/or employer disagrees with the Board's decision.
- F. The member and/or the member's employer will have sixty (60) days from the date of mailing of the letter notifying the member and the employer of the Board's decision to make a written request for an administrative hearing of the matter.
- G. Administrative hearings and subsequent Board determinations shall follow the procedure set forth in the SCERA Board of Retirement Policy for Administrative Hearings, which shall be provided to the member and / or the member's attorney and the member's employer after SCERA's receipt of the member's or employer's written request for an administrative hearing.

IV. DISMISSAL OF A BENEFIT APPEAL

If the member and/or the member's employer fails to pursue his or her appeal after initially requesting review or if the member or employer fails to file a written appeal within the time prescribed above, the matter will be considered closed and the determination of staff, the Retirement CEO, or Board will be implemented.

V. CONFLICT WITH LAWS

In the event that this policy and process conflicts with relevant statute or authoritative case law, the statute or case law will control.

IV. REVIEW

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

V. HISTORY

The Board adopted this policy on 2/21/2013.

Reviewed and revised on 7/22/2021.