

SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION
POLICY FOR BOARD ASSESSMENT OF COMPENSATION AND
PROCEDURE FOR REVIEW OF BOARD COMPENSATION DECISIONS

I. BACKGROUND AND PURPOSE

Pursuant to Government Code Section 31542, the Board of Retirement is required to adopt a procedure for assessing and determining whether an element of compensation was paid to enhance a Member's retirement benefit and to provide a process for a Member or the employer to present evidence to show that an element of compensation was not paid to enhance a Member's benefit. The purpose of this policy is to provide a procedure whereby Section 31542 is implemented.

II. STAFF REVIEW AND ASSESSMENT

- A. With respect to all retirement applications with an effective date of retirement on or after January 1, 2013, the Board directs SDCERA 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.
- B. In conducting such review and making such initial assessment, staff shall consider:
1. Whether the item of compensation was earned within the period during which final compensation is to be calculated;
 2. Whether the compensation exceeds a Member's normal base pay, as calculated by multiplying the Member's hourly rate of pay by their authorized hours;
 3. Whether the earnings codes reported are in accordance with the statutes cited in paragraph II.A of this policy and other applicable law;
 4. 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
 5. Information and explanation provided by the Member and the employer in response to SDCERA'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. 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.

III. PREPARATION OF WRITTEN ADMINISTRATIVE RECOMMENDATION, AND BOARD ACTION

- A. If after conducting the initial assessment described in paragraphs II.A and II.B of this Policy,, SDCERA staff believes that an item of compensation was paid to enhance a Member's retirement benefit, staff shall prepare a written report to the Board of Retirement making an administrative recommendation to the Board that any 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.
- B. The report shall be noticed and agendized for a regular meeting of the Board, at which time the Board will act upon staff's administrative recommendation. Before the Board acts, SDCERA, the Member, and the employer shall be given an opportunity to be heard by the Board.
- C. Written notice of the Board meeting and a copy of staff's 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.

IV. HEARING ON ADMINISTRATIVE RECOMMENDATION

- A. The Board will hear any matter referred to it under this Policy, including matters based on disputed facts, although the Board may refer the matter to a hearing before a Hearing Officer on SDCERA's Hearing Officer panel, if deemed appropriate. If the Board refers the matter to a Hearing Officer, the Board will delay its final decision on the matter until it is again agendized following receipt of a written report from the Hearing Officer.
- B. If the Board refers the matter to a Hearing Officer for determination, a Hearing Officer shall be selected from the Hearing Officer panel, and a hearing will be completed in the same manner and following the same procedures and regulations as provided in the Procedures and Regulations for Disability Retirement Matters (SDCERA Board Policies, Dis Section 1), except that Paragraphs 4, 8, 11.B, 11.E., 13, 14, 20, 21, 25, 29 and any references to medical evidence contained within the Procedures and Regulations for Disability Retirement Matters shall not apply to a hearing under this Policy.

V. FINAL BOARD ACTION

- A. The hearing officer's written report will be noticed and agendized for the next regular meeting of the Board, provided that the Members and the employer must be provided at least 10 days written notice of the meeting.
- B. At the meeting, the Board will make a final decision as to whether the item of compensation was paid to enhance the Member's retirement benefit.

- C. SDCERA will provide the Member and the employer written notice of the Board's final decision within 5 days, which notice will inform the Member and the employer of their right to seek judicial review of the Board's action pursuant to Code of Civil Procedure, sections 1094.5 and 1094.6 by filing a petition for writ of mandate within 30 days after the mailing of that notice.
- D. If the Board finds the item of compensation should be included, staff will adjust the Member's benefit to include said item, retroactive to the effective date of retirement.

VI. BENEFIT PAYMENT

- A. If the payment of the Member's benefit would be delayed by seeking resolution through the administrative processes identified in paragraphs II.B.4, IV.A, IV.C, or V.A through V.D of this policy, SDCERA may process the benefit excluding the compensation in question. If it is later determined the compensation should be included, SDCERA will adjust the benefit retroactive to the effective retirement date.

REVIEW

This policy shall be reviewed by the Board at least every three (3) years and may be amended at any time.

HISTORY

November 1, 2012	Adopted, effective January 1, 2013
April 20, 2017	Revised, effective immediately