

SAN MATEO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

**BOARD OF RETIREMENT PROCEDURE FOR ASSESSMENT AND
DETERMINATION OF WHETHER AN ELEMENT OF COMPENSATION WAS PAID
TO ENHANCE A MEMBER'S PENSION BENEFIT**

I. BACKGROUND

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 if the Board determines that it was paid to enhance a benefit, to provide a process for the member or the employer to seek review of the Board's determination.

II. FACTORS TO BE CONSIDERED IN STAFF REVIEW

With respect to all retirement applications with an effective date of retirement on or after January 1, 2013, Staff shall review all compensation included within the calculation of the member's final compensation within the meaning of the following Government Code sections: 7522.32 (final compensation PEPRA Plan); 7522.34 (pensionable compensation PEPRA Plan); 31461 (compensation earnable); 31462 (final compensation), 31462.1 (final compensation -1 year period), 31462.11 (final compensation -1 year period); and 31462.2 (final compensation 3 year period), as applicable. This review will be 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.

- A. **Non-PEPRA Plan Members.** For all members commencing employment before January 1, 2013, and those members who commence employment after that date who are not members of the PEPRA Plan, the determination can be guided by Government Code §31461(b) which provides that compensation earnable, shall not include in any case the following:
1. Any compensation determined by the Board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:
 - (a) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.
 - (b) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(c) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

2. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.
3. Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
4. Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

B. **PEPRA Plan Members.** For all members commencing employment on or after January 1, 2013, who are members of the PEPRA Plan, the determination can be governed by Government Code §7522.34, which provides that pensionable compensation does not include the following:

1. Any compensation determined by the Board to have been paid to increase a member's retirement benefit.
2. Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.
3. Any one-time or ad hoc payments made to a member.
4. Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.
5. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.
6. Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
7. Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.

8. Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.
9. Employer contributions to deferred compensation or defined contribution plans.
10. Any bonus paid in addition to the compensation described in subdivision (a) of Government Code §7522.34.
11. Any other form of compensation the Board determines is inconsistent with the requirements of 7522.34 (a).
12. Any other form of compensation that this Board determines should not be pensionable compensation.

C. **All Members.** In addition to the factors listed above, Staff shall consider one or more of the following factors:

1. Whether the earnings codes reported are in accordance with the Board resolutions defining "Compensation Earnable" and "Pensionable Compensation" and the statutes cited in this policy, and any amendments thereto, and other applicable statutory or case law.
2. Whether the item of compensation was earned or received within the period during which final compensation is to be calculated.
3. Whether the item of compensation was earned or received at any other time during the member's employment outside of the final compensation period and, if so how frequently;
4. Whether similarly situated members received the same element of compensation for the same period(s) of time.
5. Whether the member was entitled to receive the item of compensation pursuant to a collective bargaining agreement that was subsequently deferred or otherwise modified as a result of a negotiated amendment of that agreement. *(If so, the pay item shall not be deemed to have been paid to enhance a member's retirement benefit. Pursuant to Government code section 31542(c).)*
6. The percentage increase to the member's pension due to the inclusion of the pay item.
7. Information and explanation provided by the member and the employer in response to SamCERA'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.

8. 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.

III. PROCESS:

A. Initial Staff Review:

After the member has elected the year or years, if applicable, to be used to determine a member's final compensation, Staff shall make an initial assessment of whether any item of compensation included in final compensation period was paid to enhance a member's retirement benefit.

B. Staff Decision.

1. **Initial determination and processing of benefit.** If Staff initially determines that the item of compensation was paid to enhance a member's benefit and payment of the member's benefit would be delayed by seeking resolution through the administrative processes set forth below, Staff may process the benefit excluding the compensation in question. If it is later determined the compensation should be included, Staff will adjust the benefit retroactive to the effective retirement date.
2. **Notice of Initial Staff Determination.** Staff shall notify the member and the employer (if it is the County, the member's department head will be notified) of its initial determination to exclude an item of compensation on the basis that it was paid to enhance a member's retirement benefit. The notification shall include the reasons for the determination.
3. **Written response to Staff Determination.** The member and the employer shall have 15 days to respond to staff regarding its initial determination. If the member and or employer disagree with the determination, either or both shall submit a written response to the Chief Executive Officer setting forth the reasons why the item of compensation was not paid to enhance the member's retirement benefit.

C. Response To Staff Decision By Member and or Employer.

4. **No Response Submitted.** If no response by the member or the employer to Staff's initial determination is received, Staff shall present a report with a recommendation to the Board for its approval to exclude the item on the basis that it was to enhance the member's benefit. The report shall contain a description of the reasons for staff's recommendation, including the specific facts and circumstances supporting staff's recommendation. It shall also set forth information, if any, received from the member and or employer.
5. **Response Submitted.** If a response is received, and after a review by the Chief Executive Officer, or designee, it is Staff's final determination that the pay item

should be excluded on the basis that it was to enhance the member's benefit, Staff shall prepare a report to be presented to the Board for its approval. The report shall contain a description of the reasons for staff's recommendation, including the specific facts and circumstances supporting staff's recommendation. It shall also set forth the response received by the member and or employer.

6. **Notice of Recommendation to the Board.** For any matter that is to be presented to the Board, Staff shall provide written notice of the Board meeting and a copy of staff's report to the member and the employer, no later than 10 days before the recommendation is presented to the Board for action.

C. **Decision by the Board of Retirement.**

1. **Opportunity to be heard.** Before the Board acts, Staff, the member, and the employer shall be given an opportunity to be heard by the Board.
2. **Finding that Compensation Item Should be Included.** 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.
3. **Finding that Compensation Item Should Not be Included.** If the Board finds that the item of compensation was paid to enhance a member's retirement benefit, Staff shall provide written notice of that determination to the member and employer. The member or the 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 the notice. If a writ of mandate is not sought and or obtained, the Board's decision shall become final and binding.